

The Organisation of Asylum and Migration Policies in Germany: Study of the German National Contact Point for the European Migration Network (EMN)

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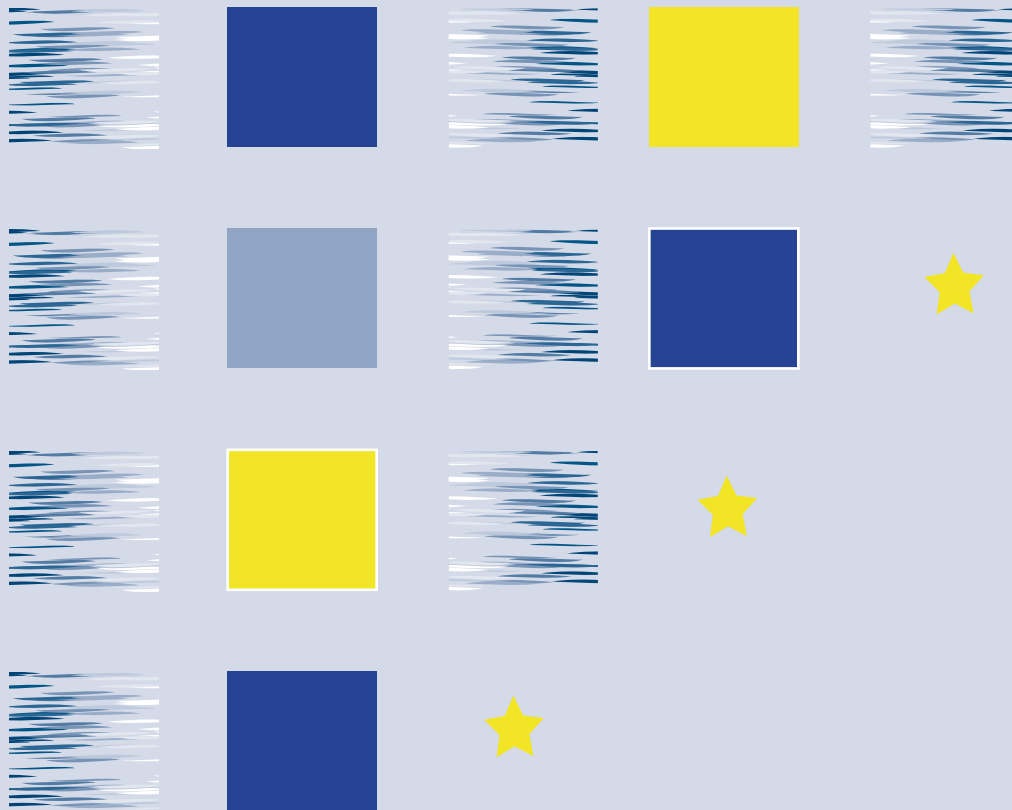


The Organisation of Asylum and Migration Policies in Germany

Study of the German National Contact Point
for the European Migration Network (EMN)

Working Paper 25

Jan Schneider



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The Organisation of Asylum and Migration Policies in Germany

Study of the German National Contact Point
for the European Migration Network (EMN)
(2. revised and updated edition 2012)

Jan Schneider

Federal Office for Migration and Refugees 2012

Executive Summary

Questions around organisational arrangements in distinct policy areas of the nation states receive utmost attention in the course of harmonisation efforts within the European Union. This organisational/institutional study was developed within the framework of the European Migration Network (EMN) as the second edition of the German contribution to the EMN-study “The Organisation of Asylum and Migration Policies in the EU Member States”. Its emphasis is placed on a descriptive and analytical overview of the institutional context, legal bases, responsibilities and competences of ministries, authorities and other organisations in the context of immigration of asylum applicants and other third-country nationals. As far as Germany is concerned, the study’s first edition constitutes the first systematic overview displaying such broad scope. Thus, areas of migration research, policy advice, public advisory services and non-governmental organisations are taken into account as well. Furthermore, a brief historical overview on immigration and the evolution of associated institutions, aimed at facilitating the understanding of organisational and administrative competences, is also part of the study.

The current German migration policy is embedded into a multifaceted and partly intertwined institutional framework, which has undergone significant change in the course of several (legal) amendments over the past years. Organisational and administrative processes yielded by the various regulations of migration law or induced by migration policies tend to be rather complex. This is due to factors such as the federal and subsidiary nature of the Federal Republic, but also the gamut of provisions applying to the policy field. In the fourth section, marking the core part of this study, these legal grounds and procedural arrangements for asylum and migration are itemised and described according to the realms of entry, admission or acquisition of status, legal residence or changes of status, access to the labour market and termination of residence.

Political, legislative and institutional framework

Both German asylum/refugee law and immigration/residence law are governed on the federal level under exclusive or concurrent legislation. The most essential piece of legislative reform in the last decade can be attributed to the introduction of the 2004/2005 Immigration Act, which superseded the Aliens Act of 1990. The Residence Act as part of the Immigration Act marks the cardinal legal basis for the entry, residence and employment of third-country nationals. Asylum procedures and the recognition of refugees follow constitutional standards and the provisions set by the Asylum Procedure Act. Beyond the level of federal acts, several legal and administrative provisions on federal or state levels prevail. As administrative enforcement lies within the responsibility of the Federal States, emphasis is placed on processes of consultation and cooperation, which inter alia take place within the Standing Conference of the Federal States’ Ministers and Senators of the Interior.

The utmost important function in policy formulation lies with the Federal Ministry of the Interior (BMI). The Federal Office for Migration and Refugees (BAMF) and the Federal Police (BPol) as subordinate authorities to the BMI are responsible for the majority of operative tasks on the federal level; other essential actors within the realms of administration and management of procedures are the Foreigners Authorities of the Federal States (regarding residence), the federal Employment Agency (regarding access to the labour market) and the Diplomatic Missions (regarding visa issuance). Furthermore, the spectrum of other actors engaged in asylum and migration policies has continuously broadened over the past few years. In addition to a growing number of non-governmental organisations, particularly the areas of migration research and policy advice have gained increased attention.

Organisation and Administration of Asylum and Migration Policies

Depending on the particular purpose of entry or residence, based on the Residence Act, various authorities are in charge of organisation and administration. More recently, it was predominantly in the area of visa and border management that a number of actions were taken in order to improve security or preclude illegal entries, respectively. Thus, particularly German Diplomatic Missions, border and security authorities, Foreigners Authorities and the BAMF are collaborating closely. Furthermore, expulsions have been facilitated through the introduction of additional facts of the matter; it is e.g. at the authorities' discretion to issue an expulsion order in case of certain acts which are particularly detrimental to integration.

Upon entry, the municipal Foreigners Authorities are generally the competent administrative bodies for all residence- and passport-related measures and rulings. If, however, an asylum seeker reports to the border agency and is entitled to enter the country, he or she is then transferred to the nearest initial reception centre; thus, the BAMF takes over processing the asylum claim.

Over the past few years, the Federal Republic of Germany has implemented important European acts of asylum legislation such as the Dublin II Regulation or the Qualification Directive. Likewise, in the area of immigration, changes in organisational responsibilities have been induced by EU-legislation. The 2007 Directives Implementation Act transposed a total of eleven European directives, among them the so-called Researcher Directive, by which a specialised procedure for the recognition of research institutions, executed within the BAMF, has been introduced.

The most significant organisational changes, however, have occurred in the administration of labour migration. By introducing a one-stop-system, the dual authorisation procedure for residence (by the Foreigners Authority) and employment (by the Federal Employment Agency) has been replaced with one concentrated administrative act. Thus, the local Foreigners Authorities has become responsible for issuing residence titles and is now the primary (and only) location for all decisions regarding third-country

nationals' residence and their taking up employment. Only in case of required assent for a certain occupation, the Federal Employment Agency is consulted by means of an internal procedure and then examines the prerequisites according to the law.

Links to other Policy Areas

Asylum and migration in Germany are rightly termed cross-sectional topics, as they are connected to numerous other policy areas in various respects. The most striking overlaps can be perceived with regard to integration policy; key aspects of integration such as language and integration courses are directly regulated in the Residence Act. Apart from integration, labour market and health policies, migration policy is increasingly intertwined with development policy, e.g. in the area of assisted return. But also other areas such as security policy and anti-discrimination policy are not to be neglected in that respect. Furthermore, strong points of reference to other specialised policy domains and a generally broad topical embeddedness of migration and asylum policies become evident in parliamentary affairs of the German Bundestag: All important draft bills in asylum and immigration law are normally deliberated upon in the leading Parliamentary Committee on Internal Affairs, and in most of the times also discussed in the Committees on Legal Affairs; Labour and Social Affairs; Education, Research and Technology Assessment; Foreign Affairs; Family Affairs, Senior Citizens, Women and Youth; as well as Human Rights and Humanitarian Aid.

Experiences in Developing Asylum and Migration Policies

German asylum and migration policy is apt to remain a policy area with comprehensive needs for regulation and rather complex organisational responsibilities, particularly set against the background of the harmonisation of law within the European Union. Since the passing of the 2004 Immigration Act a number of reform steps have been undertaken, some of which implied an alteration of organisational procedures. Thus, several procedural competences and legal bases have been adapted on the basis of evaluations. Some reforms (e.g. the introduction of a visa warning file, the expansion of the security-oriented consulta-

tion procedure for reviewing the prerequisites for granting visas or the implementation of the Foreign Professional Qualification Recognition Act) require additional administrative effort and have not yet been evaluated comprehensively. Other steps such as the implementation of a hardship case regulation in refugee law, a statutory grandfather clause for people obliged to depart but endowed with an exceptional temporary leave to remain, or the pooling of authorisation procedures for residence and employment at the Foreigners Authorities are developments that have generally been evaluated as positive by the Federal Government. In particular, managing labour migration has been facilitated legally by means of an expansion of designated schemes, which point at the evolvement of a more flexible system of increasing Germany's attractiveness to highly qualified persons and students from third countries with less complicated administrative procedures.

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1 Introduction

Alongside integration, asylum and migration have been among the most important and divisive issues in domestic policy. However, organisational and administrative procedures, which are determined by migration policy or result from the various legal sources of the law on foreigners, tend to be rather complex. Contributing to this complexity are factors such as the federal-subsidary structures of the Federal Republic of Germany or the multitude of regulations and institutional responsibilities. Moreover, this organisational structure is subject to a steady transformation and integrated into a European legal system for asylum and migration, which has been developing dynamically for the past few years and which gradually aims at harmonising these policies. To this end, the European Union aimed to establish a Common European Asylum System by the end of 2012.

Subject and Aims of the Study

Knowledge on institutional and organisational competencies in the EU Member States, which are in part rather diverse, an overview of the relevant legal bases as well as information on the “embeddedness” of policies within the national arena may serve to make the process of policy development on the European level more efficient. How is German migration policy organised? Which legal bases apply and which institutions deal with administrative issues on executive and operative levels? Can overlaps between asylum/migration policy and other policies be discerned and which ministries or organisations are the competent bodies? Which are the key stakeholders, non-governmental organisations and academic institutes that take an active part in this policy area? What lessons can be learned from the most recent changes in law and is there a necessity to further develop the law or organisational and administrative routines, respectively?

This study aims at providing concise answers to these questions by roughly outlining the organisation of asylum and migration issues in the Federal Republic of

Germany. The report was written as a country study of the German National Contact Point within the framework of the EU-wide study of the European Migration Network (EMN) entitled “The Organisation of Asylum and Migration Policies in the Member States of the European Union”. Thus, it serves information needs of both the European Commission and other National Contact Points of the EMN. Furthermore, the study as an introductory and up-to-date overview is also aimed at representatives of politics and administration at national and European levels, as well as the media and the interested wider public. The first edition of this study was published in 2009. Numerous elements have been updated for this second edition, primarily so that the study reflects the new legal situations in various areas.¹

Methodology and Sources

This study has been written on the basis of a variety of sources, among them legal texts, the pertinent commentaries on foreigners and residence law and a comprehensive brochure published by the Federal Ministry of the Interior, covering the main features of German migration and integration policy (BMI 2011). Furthermore, internal elaborations of the Federal Office for Migration and Refugees have been taken into account, e.g. on the description of operational steps in the asylum procedure. Some of the quoted figures have been extracted directly from the German Central Aliens Register. Furthermore, statistical reports and working papers of the Federal Office for Migration and Refugees, including previous studies undertaken in the context of the EMN, have been taken into account. In addition, a number of reports by the Federal Government Commissioner for Migration, Refugees and Integration as well as current data from publications

1 The author thanks Eva Hohlfeldt for her editorial assistance during her internship at the Federal Office for Migration and Refugees.

by the Federal Employment Agency and the Federal Statistical Office were included. Parts of the General Administrative Regulation of the Residence Act were also used in describing responsibilities and administrative practices in the area of residence. A great deal of information on institutional responsibilities, work programmes and practice-oriented offers was taken from the websites of governmental and non-governmental organisations; these are found in footnotes and the appendix to this study.

Eventually, the latest research literature has been taken into account; yet it has to be mentioned that – so far – the number of substantial publications actually focusing on how asylum and migration policies are administered and organised is rather small (cf. Groß 2006; Gutmann 2008; Thym 2010; Bast 2011).

Despite the fact that the objective of this study is to produce a complete account, it is also committed to meeting the goal of providing a basic and structured overview on a limited number of pages at the same time. Thus, there are no in-depth discussions on the presented issues, nor has a comprehensive analysis of the asylum and migration systems of the Federal Republic of Germany been undertaken. Likewise, the institution chart in appendix 6.3 serves the goal of visualising the fundamental conceptions inherent to the organisation of asylum and migration policies in Germany. The final chapter focuses on a number of topics and associated organisational issues, which are subject to current debates around the administration of asylum and migration. In addition, several modifications of the law, which occurred between 2007 and 2012, have been taken into account; yet their impact cannot be assessed properly at this point. However, all legal changes – including the recent amendment of the Residence Act and other regulations through the EU Blue Card Directive Implementation Act – have been taken into account as of 1 August 2012.

2 The Organisation of the Political, Legislative and Institutional Framework

2.1 Migration and Asylum Policies within the Structures of the Legislative System

2.1.1 The political system of the Federal Republic of Germany

As laid down in its constitutional Basic Law, the Federal Republic of Germany is a democratic and social Federal State. Thus, policy formation and the enactment of laws and regulations take place within a political system, in which legislative and executive powers are divided between the Federation and the 16 Federal States (Bundesländer or Länder). Besides the Federal Government, each of the individual Länder has its own constitution and government, which is responsible to an elected parliamentary assembly. Accordingly, administrative responsibilities in the area of migration and asylum are strongly intertwined and distributed among the federal, state and municipal levels (cf. section 2.3), in fact constituting a three-tiered executive structure (cf. Rudzio 2006: 319).

Legislation

In terms of legislative competences, the Basic Law institutes a somewhat intersecting system, dividing up lawmaking authority between the Länder and the Federation. As a basic principle, the Länder shall have the right to legislate in all matters that are not explicitly conferred to the federal level. However, there is a line of policy fields formally under exclusive legislative power of the Federation as well as a broad range of matters under so-called concurrent legislation. On the latter, the 16 state parliaments have the power to legislate only as long as and to the extent that the Federation has not engaged by enacting a law. Effec-

tively, most matters under concurrent legislation are regulated by federal acts of law, since further passages in the Basic Law as well as the constitutional jurisdiction acknowledge an outstanding importance of the federal unity. On most matters, the Federation may – and has done so – enact laws “if and to the extent that the establishment of equivalent living conditions throughout the Federal Territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest” (Art. 72 Paragraph 2 Basic Law -GG).

Thus, Germany’s federal system leaves in fact little margin for autonomous government of its constituent states, and the magnitude of uniformity achieved in terms of law resembles that of a centralised unitary state (cf. Schmidt 2003: 41-42; Lehmbruch 2000: 89-90). As a result of this constitutional “unitarian” tendency, migration- and asylum-relevant matters such as citizenship, the freedom of movement, immigration, emigration, extradition, passports, residence registration and identity cards as well as the law relating to residence and the establishment of foreign nationals are regulated in legal acts on the national level. Likewise, the overarching laws concerning refugees and expellees – actually under concurrent legislative responsibility – have been enacted nationally. The only relevant policy matters almost exclusively under the auspices of the states are police, science and education.

However, the Länder are far from being powerless. They exercise comprehensive participation rights and veto positions regarding legislation at the national level. Furthermore, they are in charge of most areas of public administration and therefore engaged in both processes of vertical coordination (with the federal level) and horizontal cooperation (among the Länder) (Schmidt 2003: 64). On the federal level, representa-

tives from the 16 state governments form a second chamber, the Bundesrat. When it comes to passing federal legislation, it plays a similar role to that of upper houses or senate chambers in other countries. In the Bundesrat, any federal bill endorsed by parliament (German Bundestag) is deliberated upon, but only those laws that are of increased importance and/or imply administrative efforts and costs for the Länder require the latter's approval. In all other cases (so-called appeal laws), the Bundesrat's rejection can be overruled by the Bundestag. Over the decades, the share of approval laws has risen to more than 50 percent – a condition which is, according to Burkhardt and Manow (2006), rather unlikely to change in a significant way, despite recent reform efforts. As virtually all asylum and migration policies, in one way or the other, affect the Federal States directly and require administrative efforts on their sides, the corresponding laws need to pass the Länder-chamber and frequently undergo significant changes, particularly in situations of different majorities in the two chambers. Thus, acts in migration law oftentimes reflect compromise agreements, accomplished as a result of deliberation and negotiation in a special mediation committee, in which members of both Bundestag and Bundesrat are represented (cf. Spinner 2007: 94-96). Beyond political decision-making, the laws' implementation, administration and further development are subject to constant coordination within horizontal fora among the states.

Other Instruments outlining the Statutory and Administrative Framework

One important arena of policy formation in that respect is the Standing Conference of the Federal States' Ministers and Senators of the Interior (IMK), with consultative participation of the Federal Minister of the Interior (cf. 4.2.3). This committee usually meets on top-level twice a year, and major decisions are only taken if there is unanimity. Notwithstanding the fact that these decisions do not yield direct legal consequences, they are binding as political recommendations and are referred to by the legislators on both federal and state levels. In this regard, amendments of the Residence Act² in the area of right of abode/grandfather clauses for aliens with long-term exceptional

leave to remain can be traced back to the consultations of the IMK (cf. Schneider 2010: 326).

Questions of labour immigration and the integration of migrants in the labour market have since become the subject of the Conference of Ministers and Senators for State Labour and Social Affairs, which – similar to the IMK – serves to promote co-operation and co-ordination of states' interests in the area of labour and social policy.

Furthermore, the State Ministers and Senators on Integration regularly meet to consult on political plans in the area of integration.

Beyond the level of the federal law, several legal and administrative provisions determine the implementation of migration and asylum policy. According to the constitutional Basic Law, Federal Government, a Federal Minister, or the Länder-governments may be authorised by a law to issue statutory instruments, substantiating its content for administrative practices or creating detailed regulations for a certain matter. In certain areas, the consent of the Bundesrat is required for statutory instruments issued by the Federal Government or a Federal Minister according to Art. 80 (2) GG. For several details of migration law, special ordinances have been decreed, e.g. employment or integration courses (cf. 2.2). Since 26 October 2009, the General Administrative Regulation of the Residence Act has been in force comprehensively (cf. 2.2). Furthermore, the Länder enact, on the executive level, ministerial ordinances and administrative regulations guiding the local Foreigners Authorities on how to implement and apply federal law, and fostering consistency in the application of the law. Similarly, the Federal Employment Agency is providing detailed directives to its local branches on how to proceed with the regulations on access to the labour market.

2.1.2 Main Actors in the Administration of Migration and Asylum

As result of the Immigration Act, integration promotion was centralised, transferring authority from the Federal States to the Federal Government. Regardless, the cities and municipalities remain important arenas for integration measures. Otherwise the majority of migration administration is conducted by the individual Federal States, given that their Foreigners Authorities are basically responsible for decisions regarding

2 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Aufenthaltsgesetz – AufenthG)

residence and passports. However there are instances in which the offices are subject to federal directives. Federal States are also responsible for providing asylum seekers with accommodation in the reception centers, while the federal and state police/law enforcement offices are responsible for returning persons to the border and executing deportation orders. Decisions pertaining to asylum applications and the issuance, cancellation and revocation of refugee status are made by the Federal Office for Migration and Refugees (cf. 2.3.2), in whose branch offices applications can be filed throughout the Federal Territory. The independence of individual decision-makers (case-officers) from instructions was repealed by the Immigration Act, so that the Federal Minister of the Interior has final executive authority on the granting of political asylum (cf. Groß 2006: 51f.).

2.1.2.1 Executive Level

Federal Ministry of the Interior (BMI)³

The Federal Ministry of the Interior is concerned with, among other things, the Federal Government's migration and integration policies, as well as with the associated issue of European harmonisation. Furthermore, measures to improve integration are decided at the federal level by the Federal Ministry of the Interior. The ministry also exercises legal and technical oversight over the Federal Office for Migration and Refugees.

Federal Ministry of Labour and Social Affairs (BMAS)⁴

The Federal Ministry of Labour and Social Affairs is responsible for the legal basis of the employment of foreigners, as well as for promoting profession-specific integration into the job market. To this end, the ministry offers special language courses. Additionally since 2005, the BMAS has been supporting "IQ" (Integration through Qualification), a Germany-wide information and consultation network designed to assist persons with migratory background integrate into the workforce. As part of implementing the National Integration Action Plan, the IQ support programme, together with the Federal Ministry for Education and

Research and the Federal Employment Agency, has been undergoing expansion since mid-2011 to become a nationwide structure of regional networks.

Federal Foreign Office⁵ / Diplomatic Missions

Diplomatic missions (embassies and consulates general) are authorised by the Federal Foreign Office to handle all passport and visa issues abroad (section 71(2) Residence Act). The embassies and consulates have visa offices. The diplomatic mission in whose administrative district the visa applicant resides/has residence is locally responsible. The particulars of the issuing of visas are laid down in the EU's Community Code on Visas.

Federal Government Commissioner for Migration, Refugees and Integration⁶

The position of Commissioner for Migration, Refugees and Integration (formerly Federal Government Commissioner for Foreigners) was created at the Federal Chancellery. The office holder's task is to provide advice to the Federal Government as well as to participate in forming bills. Furthermore, the Commissioner of the Government is responsible for promoting the integration of foreigners in Germany while simultaneously counteracting xenophobia. The position can be filled by a member of parliament. The Commissioner's scope of tasks is outlined in a separate chapter of the Residence Act (sections 92, 93 and 94).

Federal Government Commissioner for Matters related to Repatriates and National Minorities in Germany⁷

The Office of the Federal Government Commissioner for Repatriation Issues was established in September 1988 and is responsible for coordinating all measures related to ethnic German immigrants (repatriates) within the Federal Government. In comparison with foreign migrants, ethnic Germans or late repatriates constitute a specific group of immigrants. As persons of German descent which live, or have lived, in the successor states of the Soviet Union, they are admitted in Germany on the basis of a special procedure and are

3 Bundesministerium des Innern (BMI); www.bmi.bund.de

4 Bundesministerium für Arbeit und Soziales (BMAS); www.bmas.de

5 Auswärtiges Amt; www.auswaertiges-amt.de

6 Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration; www.integrationsbeauftragte.de

7 Beauftragter der Bundesregierung für Aussiedlerfragen und nationale Minderheiten in Deutschland; www.aussiedlerbeauftragter.de

granted German citizenship (cf. 3.1 and 3.3). The Commissioner, out of the Federal Ministry of the Interior, coordinates all measures and programs within the Federal Government directed at German repatriates and is appointed upon decision of the Federal cabinet. In November 2002, the Commissioner's mandate was expanded to include national minorities (Danes, Frisians, Sorbs and German Sinti and Roma).

2.1.2.2 Operational Level

Federal Office for Migration and Refugees (BAMF)⁸

The Federal Office for Migration and Refugees is a supreme Federal Office under the auspices and executive responsibility of the Federal Ministry of the Interior and operates as a centre of excellence for migration, integration and asylum, carrying out a wide variety of tasks.⁹ It conducts all asylum proceedings in Germany, including the procedure for ascertaining the responsibility for the examination of an asylum application within the Dublin-procedure, and determines both approval of refugee status pursuant to the United Nations Convention Relating to the Status of Refugees and target state-related impediments to deportation according to the European Convention on Human Rights. In the course of examining and deciding upon asylum applications, statutory precluding matters of fact (e.g., delinquency, terrorism clause) have to be considered. What follows for the Federal Office is a distinct mandate to investigate, which is carried out in close cooperation with the security authorities on both the federal and the Länder-level.

In 2005, the Federal Office was assigned a number of additional duties, including the drawing up of concepts and the implementation of integration courses, conducting the technical support of the Federal Government to promote integration, providing migration-specific consultation services and promoting social integration projects. Furthermore, the Federal Office researches migration issues (cf. 2.5), provides information and support regarding voluntary return and man-

ages the Central Aliens Register (AZR).¹⁰ Furthermore, the BAMF, following special regulations of the Residence Act, coordinates the reception of distinguished groups of foreigners (e.g. resettlement measures as part of intra-community solidarity or in co-operation with the UNHCR).

Additionally, the BAMF is the administrative centre or contact body for a number of EU financial instruments for implementing migration and integration policies as well as for operational tasks associated with European legal acts pertaining to asylum and migration law. Thus, it has taken over responsibility concerning the recognition of research establishments for the purpose of concluding admission agreements pursuant to section 20 Resident Act (implementation of the so-called Researcher Directive).¹¹ Furthermore, it acts as national contact point and competent authority regarding the Implementation of the Council Directives on temporary protection¹², on long-term residents¹³ on student admission¹⁴ and the Blue Card.¹⁵

Federal Office of Administration (BVA)¹⁶

The Federal Office of Administration is, among a number of duties other than asylum and migration issues, responsible for the entry and admission of ethnic German repatriates, and processes the data in the Schengen Information System (SIS) as well as – on

⁸ Bundesamt für Migration und Flüchtlinge; www.bamf.de

⁹ Its utmost important duties are outlined in section 75 Residence Act.

¹⁰ Ausländerzentralregister. The general data stock of the Central Aliens Register contains data on all foreigners who stay in Germany for longer than three months. A separate visa file contains data on foreigners who have applied for a visa from a German Diplomatic Mission abroad.

¹¹ Cf. 4.1.4.2; section 75 Residence Act und section 38a-f Residence Ordinance.

¹² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

¹³ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

¹⁴ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

¹⁵ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

¹⁶ Bundesverwaltungsamt; www.bundesverwaltungsamt.de

behalf of the Federal Office for Migration and Refugees – the Central Aliens Register (section 1(1) sentence 2, Central Aliens Register Act).

Federal Police (BPol)¹⁷

The Federal Police (known prior to 1 July 2005 as Federal Border Police) is an authority under the purview of the Ministry of the Interior and conducts special border protection operations on land, water, and by air to prevent the unlawful entry or smuggling of foreigners as well as human trafficking. In particular, this refers to controlling trans-border traffic by inspection of passports, visas and other documents for border crossing, border tracing as well as averting of dangers. The tasks of the BPol are set forth in the Federal Police Act¹⁸ and several other laws such as the Residence Act or the Asylum Procedure Act (cf. 2.2). The competences of the BPol as a border control agency pertaining to residence law accrue from section 71(3) Residence Act. Among other things, they refer to the refusal of entry or the removal of foreigners without entry visas, the revocation of visas in particular cases and the temporary suspension of deportation if the respective conditions of section 60a Residence Act prevail. If conditions for entry are not met, pursuant to the Residence Act, foreigners are denied entry by the authorities charged with carrying out the police control of cross-border traffic, or they are removed from the border areas (sections 14, 15, 57 Residence Act; cf. also fn. 133).

The Federal Police is not constrained to the immediate federal border or surrounding areas – borderland refers to a strip of 30 kilometres at land borders and a strip of 50 kilometres at sea borders¹⁹ – in carrying out its tasks. It also operates inland on air- and seaports as well as within the Federal railway system (“Railway Police”, cf. section 3 Federal Police Act).

When repatriating third-country nationals illegally residing in the Federal Territory, the Federal Police is responsible for co-ordinating supervised repatria-

tions by air, working closely with other authorities, in particular the Foreigners Authorities (cf. Kreienbrink 2007: 153–163).

Another special competence of the Federal Police is to carry out deportations, which may be issued by the Federal Ministry of the Interior, pursuant to section 58a(2) Residence Act, against a hazardous potential terrorist (cf. 4.1.5).

Police Forces of the Federal States

The Länder (Federal States) are by constitution in charge of police. Besides enforcing the general criminal law and other parts of public law, police forces of the states are also responsible for several tasks resulting from foreigners law. Generally, within the scope of their tasks, they are responsible for the domestic control of foreigners in order to avert dangers for public safety and order (Westphal/Stoppa 2007: 106). Control of cross-border traffic, again, generally rests on the Federal Police (see above).

General competences of Länder police forces further arise from the Residence Act. They primarily refer to termination of residence and are partly carried out in cooperation with the Federal Police. Thus, the responsibility of the BPol for removing foreigners who have entered unlawfully is limited to the 30- or 50- kilometre border area; apart from that, concurrent responsibilities prevail between states’ Foreigners Authorities and the states’ police forces (section 71(1) and (5) Residence Act). Also, for verification, establishment and documentation of the identity of a foreigner (sections 48 and 49 Residence Act), there are mutual competences in as much as police may take certain measures, if this is necessary in order to fulfil its tasks. Besides, police forces of the Federal States are competent for actions in order to enforce the duty to leave in case of unlawful residence and to carry out deportations (sections 12(3) and 58 Residence Act). For the purposes of enforcing the duty to leave, preparing a removal, or carrying out a deportation, police forces of the Federal States may take a foreigner into custody and plead for detention at court, if this is necessary (section 62(2) Residence Act).

The State Criminal Police Offices (LKA) report directly to the police forces of the federal states and perform central tasks in threat prevention and prosecuting special cases in the field of law enforcement. Regarding

¹⁷ Bundespolizei; www.bundespolizei.de

¹⁸ Act on the Federal Police (Bundespolizeigesetz – BPolG) of 19 October 1994

¹⁹ The seaward strip of 50 kilometres may be extended to a maximum of 80 kilometres by subsidiary provision of the Federal Ministry of the Interior and according approval of the upper house (Bundesrat), insofar as this is required for border surveillance in German coastal regions.

the phenomenon of organised crime, they take action against human smuggling and trafficking, among other criminal acts. The central office function of the LKÄ provide a direct link between the police stations in the federal states and the BKA.

State Ministries of the Interior and Foreigners

Authorities

The state ministries of the interior are responsible for aliens related topics in the federal states and thus also for the Foreigners Authorities on the state and municipal level, which are tasked with operational duties. As part of the Federal Government's laws and administrative regulations, they can enact ordinances and administrative regulations for the respective state government to implement migration policy at the state level. The Foreigners Authorities, which are subordinate agencies to the state governments, are responsible for virtually all legal residence and passport measures outlined in the Residence Act, including decisions on deportation, ensuring its execution and assessing deportation bans. The Federal States may appoint designated Foreigners Authorities with competences for a certain task, e.g. a central office may be responsible for the organisation of all expulsions within the respective Federal State (section 71(1) Residence Act; for the various competences see details in chapter 4).

Federal Criminal Police Office (BKA)²⁰

In order to co-ordinate crime-fighting both nationally and internationally, the Federal Criminal Police Office (BKA) was created as the central office for law enforcement information and communication, as well as for the criminal police. The BKA is the central office for INTERPOL, EUROPOL and the Schengen Information System (SIS). The BKA supports the Federal Office for Migration and Refugees by analysing the fingerprint sets of asylum-seeking foreigners. For this purpose, the BKA operates "AFIS", an Automatic Fingerprint Identification System. Furthermore, the BKA conveys and examines data from within the framework of the EU-wide "Eurodac"-system (section 5, Ordinance on Determining Asylum Competences). Additionally, the

BKA runs the manhunt database INPOL ("Informationssystem der Polizei"), which can be accessed by the police authorities of the Länder and which files all decrees on expulsion and deportation of foreigners.

Federal Employment Agency

The Federal Employment Agency as responsible authority generally has to approve of a third-country national being granted a residence title for the purpose of assuming gainful employment (section 39 Residence Act). As a general prerequisite, inter alia, no preferential workers may be available and the foreigner may not be employed under less favourable conditions than a comparable domestic worker would be. The conditions for approval, denial, or revocation of approval of foreigners' employment are further specified in sections 39-41 Residence Act.

The admission of foreign employees shall be geared to the requirements of the German economy, considering the situation on the labour market and the need to combat unemployment (section 18(1) Residence Act). Issuance of a residence title for the purpose of taking up gainful employment is subject to intra-administrative cooperation between the municipal Foreigners Authorities and the respective Employment Agency ("One-Stop-Government"; cf. 4.1.4). The details of the law on foreigners' employment and the respective responsibilities of the Federal Employment Agency further result from sections 18-21 Residence Act and corresponding regulations according to section 42 Residence Act (cf. 2.2.3). They are described in more detail in chapter 4, particularly in section 4.1.4.

2.1.3 Important other Bodies and Stakeholders

Apart from the various administrative authorities, there are a number of actors and interest groups involved in the organisation of asylum and migration policies or engaged otherwise in the field. The following overview constitutes a non-conclusive enumeration of actors and stakeholders.

²⁰ Bundeskriminalamt; www.bka.de

2.1.3.1 Asylum and Refugees

*The United Nations' High Commissioner for Refugees (UNHCR)*²¹

The UNHCR has been present in Germany since 1951 and is supported out of Berlin by a regional representative for Germany and Austria, as well as by a branch office at the Federal Office for Migration and Refugees (BAMF) in Nuremberg. The UNHCR is entitled to be present during the interviews of asylum seekers carried out by the Federal Office and is privy to the Federal Office's decisions and justifications. Furthermore, asylum seekers have the option of contacting the UNHCR directly. The UNHCR also comments on codes of practice as well as on amendments to asylum laws from an international viewpoint and is involved in the further professional training of personnel who decide on asylum applications.

*Pro Asyl*²²

Pro Asyl is a non-governmental human and refugee rights organisation that provides refugees with individual assistance, for example during asylum proceedings in court. In addition, it operates on a political level both by publishing analyses, legal reports and surveys as well as through lobbying and public relations. A close cooperation is established in a working alliance with the Refugee Councils (see below) and other NGOs in the field. Each year Pro Asyl initiates the World Refugee Day and it is a member of the European Council on Refugees and Exiles (ECRE).

Refugee Councils

In all 16 German Federal States, as well as in some municipalities, autonomous Refugee Councils exist under the legal form of registered associations. They support specific refugees' needs and take action against racism and xenophobia. The Refugee Councils cooperate intensely with Pro Asyl and are also partly represented in the Hardship Commissions of the Federal States (cf. 4.1.3.1; 5).²³

21 www.unhcr.de

22 www.proasyl.de

23 Links to the individual Refugee Councils can be found on the following page: www.proasyl.de/de/wirueber-uns/kooperationen/fluechtlingsraete/index.html.

2.1.3.2 Migration

*International Organisation for Migration (IOM)*²⁴

IOM is a global support agency offering auxiliary programs for migrants on a national as well as on an international level. IOM's headquarters are in Geneva. Among its main working areas in Germany are programs which they carry out on behalf of the Federal Government and which organise the voluntary return and the reintegration of refugees and displaced persons. Additional aspects of IOM's activities in Germany are combatting human trafficking, facilitating labour migration, migrant movement processing and technical cooperation on migration and development. IOM works in close contact with the Federal Office for Migration and Refugees (BAMF) as the main operating actor in the field and – beside its central representation in Berlin – runs an office at the BAMF in Nuremberg.

Foreigners' Boards

In most municipalities, foreigners have a quasi-democratic representation in the form of migrants' representations/immigrant advisory boards in order to put forward their interests on a local level. These were mostly renamed in recent years as integration advisory boards and represent all migrants within the municipalities. Vis-a-vis city councils and administrations, however, they have a mere advisory function. More importantly, they form consortia on the level of the Federal States (sometimes called associations of migrants' representations or integration councils) and have become visible stakeholders, e.g. they are invited to public hearings for legislative acts pertaining to the non-German population in the Länder.

2.1.4 Migration Research

Migration research in Germany, over the last 20 years, has developed out of a niche within the academic landscape. Several university institutes deal with particular questions pertaining to migration and refugees; however, most of them maintain quite limited research agendas from the perspective of classical disciplines, such as economics, sociology, political science,

24 Internationale Organisation für Migration; www.iom.int/germany/

demography, law, education. Important cross-sectional institutes are the following:

Centre on Migration, Citizenship and Development (COMCAD)²⁵

The Centre on Migration, Citizenship and Development is one of three research groups within the Transnationalisation and Development Research Centre (TDRC) at the University of Bielefeld's Faculty of Sociology. The focus of COMCAD's research is cross-border transactions in the areas of transnational mobility, political membership and development.

European forum for migration studies (efms)²⁶

This research institute was founded in 1993 as part of the University of Bamberg. It deals with the topics migration and integration in Europe and is active in the fields of research, documentation, counseling and public relations.

Research Group within the Federal Office for Migration and Refugees (BAMF)²⁷

The Research Group, pursuant to section 75(4) Residence Act, carries out scientific research on migration and integration-related topics. Following an interdisciplinary approach, research considers the monitoring of migration to and from Germany and analyses the impact of these migration processes, hence obtaining information that is useful in migration management. Further fields of research are integration, the socio-economic impact of immigration, the link between migration and demographic change, as well as world-wide migration. Members of the Research Group are among others responsible for conducting studies within the framework of the European Migration Network.

Centre for International and European Law on Immigration and Asylum²⁸

The Centre was founded in 1994 within the Department of Law at the University of Konstanz. Its focus is on the development of European and international law in the areas of immigration and asylum, and the impact of supranational legislation on German migration law and jurisdiction.

Institute for Migration Research and Intercultural Studies (IMIS)²⁹

The Institute for Migration Research and Intercultural Studies was founded in 1991 as an interdisciplinary and interdepartmental research institute at the University of Osnabrück. The IMIS primarily studies the aspects of spatial mobility and intercultural experience.

Frankfurt Institute for Empirical Migration and Integration Research

On 16 December 2011, a new institute for empirical migration and integration research was founded at Goethe University Frankfurt. The institute is funded by the university, the Federal Employment Agency, the German Football Association and the Hertie Foundation. The institute will initially consist of three chairs and have an annual budget of 1.5 million euro. The institute's research will be practical, interdisciplinary and Europe-oriented, and will contribute to better recognising the potential of people with immigration backgrounds and tap this potential for society.³⁰

Social Science Research Centre Berlin (WZB)³¹

The Social Science Research Centre Berlin was founded in 1969 as a cross-party initiative of members of the German parliament (Bundestag) as a non-profit

25 [www.uni-bielefeld.de/\(de\)/tdrc/ag_comcad](http://www.uni-bielefeld.de/(de)/tdrc/ag_comcad)

26 [europaeisches forum für migrationsstudien; www.efms.uni-bamberg.de](http://europaeischesforumfurmigrationsstudien.de)

27 www.bamf.de/cln_101/nn_1034446/EN/Migration/Forschung/forschung-node.html?__nnn=true

28 <http://migration.uni-konstanz.de>

29 Institut für Migrationsforschung und Interkulturelle Studien; www.imis.uni-osnabrueck.de

30 Cf. Press Release "New Institute for Empirical Migration and Integration Research Founded" (German), Hertie Foundation, 16 December 2011.

31 Wissenschaftszentrum Berlin für Sozialforschung; www.wzb.eu

limited company. The research programme of the Migration, Integration, Transnationalisation Department focuses on the cultural, political and economic dimensions of migration and integration problems.

Institute for Employment Research (IAB)³²

The IAB is a research institute of the Federal Employment Agency and conducts interdisciplinary, continuous and long-term research on the development of employment and the labour market, with consideration to regional differentiations and the effects of actively promoting employment. The studies conducted within the IAB's special working group on "Migration and Integration" focus on problems related to the possibilities of improving access to the labour market, integrating immigrants into the labour market and the relationships between immigration and labour demand.

Among other activities, the IAB routinely conducts an "Overall Economic Employment Opportunity Census", which is the only survey in Germany that representatively and validly measures the development of labour demand across the entire economy. Analyses based on this census contribute to investigating the causes and extent of skill shortages and provide both employers and policymakers with recommendations on how to counteract them.

2.1.5 Consultation and Policy Advice

The history of specific policy advice on migration and integration issues in the Federal Republic is a rather recent one. Some of the institutes listed in 2.1.4 may occasionally also be involved in policy advising; however, so far there have been only a few initiatives to establish plural bodies for permanent advising on migration and integration policy. The cross-sectional, academic "Council for Migration"³³, founded in the mid-1990s, marked the endeavour of a number of renowned scholars and professors to forward the discussion on immigration and naturalisation policy in Germany. However, and despite positive repercussions in the public sphere, the council did not have

any mandate to feed its expertise into the political process in an efficient and sustainable manner. As part of the discussion on reforming alien and immigration law between 2000 and 2004, then Federal Minister of the Interior Otto Schily convened an independent commission on immigration as an advisory board of experts, and later on an independent "Expert Council on Immigration and Integration", which was intended as a permanent organisation and would draft annual reports on the current status of immigration, foreseeable developments and the possible need for migrant labour. This council was, however, dissolved shortly thereafter, as its legal base had been eliminated from the Immigration Act in the course of parliamentary negotiations prior to enactment in summer 2004 (cf. Schneider 2010: pp. 341).

National Integration Summit

Since 2006, regular integration summits have been held on the Federal Government's initiative which host players from civil society and migrant organisations in addition to federal, state and municipal representatives (cf. Zinterer 2007). The result of the first integration summit was a process for drafting a "National Integration Plan" (completed in 2007); further initiatives in the area of integration on the federal level followed until today.

National Integration Programme

In September 2010, the national integration programme presented 150 recommendations for optimising integration work in the fields of language integration, integration through education and social integration. Selected recommendations have since then been tested in projects.

Action Plan for Implementing National Integration Plan

The "National Integration Action Plan" introduced in spring 2012 is a federal initiative aimed at shaping Germany's integration policy to be more binding and verifiable. The foci of this action plan are the areas of language, education, training and the labour market. A total of 11 topics were jointly discussed by the Federal Government, the states and migrant organisations in dialogue forums, with tangible and verifiable targets, measures and instruments agreed upon for accomplishing each (cf. Federal Government 2012).

³² www.iab.de

³³ Rat für Migration; www.rat-fuer-migration.de

German Islam Conference

The German Islam Conference (DIK) was founded in 2006 by then Federal Minister of the Interior Wolfgang Schäuble. The DIK is the first national framework for dialogue between state representatives and representatives of Muslims living in Germany. Among the topics discussed are integrating the study of Islam into the German school curriculum, training religious personnel, social values and aspects of security policy. With the end of the 16th legislative period, the first phase of the DIK was completed; in the new working period, the conference is more practically oriented and will focus on strengthening the concrete participation of Muslims in Germany.

Expert Council of German Foundations for Integration and Migration³⁴

The Expert Council of German Foundations for Integration and Migration was founded in October 2008 as a non-governmental institution working as an independent scientific body that takes a stand on issues of integration and migration policy. The Council, which is supported by a consortium of eight foundations, includes 10 university professors from various fields. It is supported by an office and regularly publishes annual surveys and statements on current developments in the area of integration and migration. A separate research area conducts independent application-oriented research projects in the fields of integration and migration, supplementing the work of the experts.

2.1.6 Advisory Programmes, Integration Projects, Service Providers and Information Offers

The array of services for migrants and would-be migrants covering information, advice and counselling, as well as integration projects is broad. Despite the fact that the Federal Government and authorities on the national level have attended to the topic more intensely, e.g. by drafting a National Integration Programme, there is – following the principle of subsidiarity – a variety of decentralised offers on the level of the Federal States and municipalities, as well as by public,

semi-governmental or private organisations. Thus, the following account cannot go beyond presenting some of the central offers.

Advisory Services for Adult Immigrants (MBE)³⁵

The advisory services on migration are primarily aimed at new adult immigrants, whose integration shall be accompanied and monitored. Immigrants who have resided in Germany for longer time already may – under certain conditions – benefit from the advisory offers, too.³⁶ Advisory services are carried out under the responsibility of the Federal Office for Migration and Refugees, which may delegate operative tasks to private or public service providers. Advisory services for adult immigrants (MBE) consist of a nationwide network of counselling centres. The BAMF has commissioned the umbrella organisations of the voluntary welfare services (Workers' Welfare Federation³⁷, German Caritas Association³⁸, German Parity Welfare Association³⁹, German Red Cross⁴⁰, Charitable Organisation of the Protestant Church in Germany⁴¹, Central Welfare Office of the Jews in Germany⁴² and the Federation of Expellees⁴³) to realise the advisory services. A total of approx. 800 full-time migration counsellors professionally manage the individual support needs of immigrants. They work with them to develop support plans and get them actively involved in implementing the agreed integration measures according to an agreed schedule.

Other key tasks of the advisory services on migration are to direct migrants to, and make them acquainted with, the available possibilities for integration courses.

35 <http://www.bamf.de/DE/DasBAMF/Aufgaben/Migrationsberatung/migrationsberatung.html>

36 Cf. Support guidelines for providing Advisory Services for Adult Immigrants (MBE) of 20 January 2010, Joint Ministerial Gazette No. 13 2010, pp. 260 (German)

37 Arbeiterwohlfahrt Bundesverband e.V.; www.awo.org

38 Deutscher Caritasverband e.V.; www.caritas.de

39 Deutscher Paritätischer Wohlfahrtsverband e.V.; www.paritaet.org

40 Deutsches Rotes Kreuz e.V.; www.drk.de

41 Diakonisches Werk der Evangelischen Kirche in Deutschland e.V.; www.diakonie.de

42 Zentralwohlfahrtsstelle der Juden in Deutschland; www.zwst.org

43 Bund der Vertriebenen e.V.; www.bund-der-vertriebenen.de

34 Sachverständigenrat deutscher Stiftungen für Integration und Migration www.svr-migration.de

Furthermore, they are individually and adequately supported until successful completion of the integration course.

Besides this basic service, some Länder, municipalities and private organisations offer additional projects on their own responsibility.

Youth Migration Service (JMD)⁴⁴

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ)⁴⁵ offers a special counselling service for foreign youth and young adults aged 12 to 27 (JMD), aimed at educational, occupational and social participation. In particular, JMD are supposed to foster young migrants' participation in all areas of social, cultural and political life. The services offered by the Youth Migration Service range from individual supervision through the creation of an integration support plan to individual case counselling and work with parents, to group activities and courses.

On-Site Projects Promoting Social Integration

In addition to statutory integration offers such as the integration course, the Federal Government supports local projects to socially integrate immigrants with a perspective for long-term settlement, strengthen social cohesion and to facilitate intercultural acceptance. All-age projects are funded by the Federal Ministry of the Interior, and integration projects for youths and young adults are funded by the Federal Ministry for Families, Seniors, Women and Youth. The Federal Office for Migration and Refugees is responsible for the administrative implementation.

In addition, the statutory integration offers are supported by projects to socially integrate young and adult immigrants. The projects are intended to promote the skills and social involvement of the immigrants, as well as co-operation in the residential environment, and thereby the mutual acceptance between immigrants and their host society. As a supplement to national project funding, integration projects are also financed by the European Integration Fund (EIF).

Knowledge of business German is promoted through the ESF-BAMF programme, which is financed by the European Social Fund. The 730-hour courses of the ESF-BAMF programme include both job-related language development (levels A1 to C2) and technical industry internships, and are designed to facilitate integration into the first labour market.

Informational Websites

Basic information on migration, wordings of laws and ordinances are presented on the Federal Ministry of the Interior's special website www.zuwanderung.de. The Federal Office for Migration and Refugees, too, provides substantial, partially multilingual (English, Russian, Turkish) information on the topics of migrating to Germany, living in Germany, naturalisation and voluntary return on its website www.bamf.de. Moreover, current statistics, reports as well as scientific studies and working papers are available for download.

Basic information on Germany can be retrieved in 19 languages from www.facts-about-germany.de, a website co-financed by the Federal Foreign Office, which also offers its contents as a printed brochure. Additional multi-lingual information on Germany and its culture, media, political system, economy and general policies is provided by the Federal Foreign Office on the web-portal www.deutschland.de.

Other internet pages aim at academically or employment oriented foreigners interested in coming to Germany. The portal www.research-in-germany.de is hosted by the Federal Ministry of Education and Research and promotes Germany's progressive science, research and development landscape, in order to make it attractive to foreign researchers. As part of a concentrated effort to secure the supply with skilled labour, the Federal Government has set up the website www.make-it-in-germany.com. The campaign seeks to draw the interest of well-qualified people abroad in a professional future in Germany. Basic information on determining and recognising professional qualifications migrants have obtained abroad can be found under www.anerkennung-in-deutschland.de.

In this context, the career, education and lifestyle portal www.young-germany.de by the Federal Foreign Office particularly aims at young people. Foreign students or school graduates interested in registering with a German university may find the basics on the

44 Jugendmigrationsdienste; www.jugendmigrationsdienste.de

45 Bundesministerium für Familie, Senioren, Frauen und Jugend; www.bmfsfj.de

website www.campus-germany.de, maintained by the German Academic Exchange Service. Comprehensive information for foreign traders and entrepreneurs on doing business in Germany is provided within a special web-portal hosted by the Federal Ministry of Economics and Technology (www.ixpos.de “The German Business Portal”). The general conditions for setting up a business are separately explained on the Ministry’s business start-up portal (www.existenzgruender.de).

2.2 Important Laws and Regulations Pertaining to Migration and Asylum

Generally speaking, applicable migration law is rooted in international law, Community law and German constitutional and statutory law.

2.2.1 Asylum and Refugee Law

Article 16a Paragraph 1 of the German Basic Law guarantees the right to asylum to those who are being politically persecuted. Claims are inspected during asylum proceedings pursuant to the Asylum Procedure Act. Foreigners who are threatened with political persecution are also granted refugee protection in accordance with the United Nations Convention of 28 July 1951 Relating to the Status of Refugees (Geneva Refugee Convention). Refugee status can also be granted when normal asylum is not possible due to e.g. the safe third country rule. Here the Federal Office also checks the exclusions (“terrorism exception”, cf. 4.2.3) under the Residence Act and Asylum Procedure Act. If neither asylum nor refugee status can be granted, the asylum procedure will also check to see if subsidiary protection must be granted according to section 60(2), (3), (5) or (7) Residence Act. The regulations for issuing residence permits to asylum seekers, persons granted refugee status and persons granted subsidiary protection are outlined in section 25 Residence Act. The Asylum Seekers’ Benefits Act⁴⁶ forms the legal basis for providing support to asylum seekers and other foreigners not entitled to be granted a permanent residence, such as those given temporary leave to remain (“toleration”) or foreigners who are granted residence in accordance with international law, on humanitarian

grounds or in order to uphold political interests of the Federal Republic of Germany.

2.2.2 Migration and Residence Law

The focus of the Aliens Acts of 1965 and 1990 was solely on securing public safety and order. The Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act), most parts of which were enacted on 1 January 2005⁴⁷, marks a fundamental amendment to the foreigners law. However, the basic principle of issuing residence titles only for specific purposes was maintained from the Aliens Acts (cf. Dienelt 2008: XII; Groß 2006: 31).

Even though the advent of the Immigration Act did not mean that the authorities had to familiarise with any radically new administrative procedures, there was one important readjustment: A new “One-Stop Government” was introduced for labour migrants from third countries, meaning that right of residence and job market admission no longer require separate authorisations – rather the proper Foreigners Authority cooperates with the Federal Employment Agency (BA)⁴⁸ in an internal procedure to authorise both with a single administrative act (cf. 4.1.4 and 5).

The Residence Act, which forms a part of the Immigration Act, is the most important one with regard to the entry, residence and employment of third-country nationals. Furthermore, it sets forth the legal minimum scope of federal services to promote integration, largely focusing on language and orientation courses. The initial entry of third-country nationals with a subsequent short-term stay is governed by the Schengen Convention or the Schengen Borders Code, respectively (cf. 4.1.1) and the EU Visa Code.⁴⁹

46 Asylum Seekers’ Benefits Act (Asylbewerberleistungsgesetz – AsylbLG) of 5 August 1997 (Federal Law Gazette I, 2022), last amended by Article 2e of the law of 24 September 2008 (Federal Law Gazette I, 1856).

47 Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Zuwanderungsgesetz – ZuwG) of 30 July 2004 (Federal Law Gazette I, 1950); individual sections of the law came into force already on 6 August 2004 and on 1 September 2004, respectively (cf. Article 15 Paragraph 1 and 2 ZuwG).

48 Bundesagentur für Arbeit; www.arbeitsagentur.de

49 Residence and free movement of EU-citizens – which are not subject of this study – is regulated in the second component of the Immigration Act, the Act on the General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU of 30 July 2004).

The core legal basis for the administration of authoritative data on foreigners is the Act on the Central Aliens Register.⁵⁰

2.2.3 Amendments and further Regulations

Since its full enactment on 1 January 2005, the Immigration Act has undergone several amendments, which were primarily introduced with the so-called EU-Directives Implementation Act⁵¹, transferring eleven EU directives into German law.⁵² The most

sweeping amendments of German asylum and refugee law in the last three years, however, took place with the implementation of both the Qualification⁵³ and Procedure⁵⁴ Directives. Upon its entering into force on 1 January 2009, the Labour Migration Control Act⁵⁵ improved access to the labour market for distinct migrant groups (cf. 4.1.4). On 1 July 2011, the Act to Combat Forced Marriage, Improve Protection for Victims of Forced Marriage and Amend Further Residence and Asylum Regulations came into effect.⁵⁶ On 26 November 2011, the Act to Implement European Union Residence Directives and Adapt National Law to the EU Visa Code (a.k.a. the Second Directive Implementation Act) became effective,⁵⁷ which implemented the EU Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country nationals (a.k.a. the Return Directive).⁵⁸ The most recent, significant amendments came with the Act to Implement the European Union Directive on Entry and Residence of Highly Qualified Workers (EU Blue Card), which was passed by the German Bundestag on 27 April 2012 and by the Federal Council on 11 May 2012. Taking effect on 1 August 2012, the update amended significant parts of several laws, including the Residence Act, Employment Regulation and Employment Procedure Regulation, with the goal of making Germany more attractive for highly qualified immigrants.

50 Act on the Central Aliens Register (Ausländerzentralregistergesetz – AZRG) of 2 September 1994.

51 Act to Implement Residence- and Asylum-Related Directives of the European Union (Richtlinienumsetzungsgesetz) of 19 August 2007 (Federal Law Gazette I, 1970).

52 For a compact overview see Maaßen (2006). The respective directives were: 1) Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; 2) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification; 3) Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air; 4) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; 5) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; 6) Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; 7) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; 8) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; 9) Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; 10) Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; 11) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

53 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

54 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

55 Act to Control the Immigration of Highly Qualified Foreigners adequate to the Labour Market and to amend further regulation of the Resident Law (Arbeitsmigrationssteuerungsgesetz) of 20 December 2008 (Federal Law Gazette I, 24 December 2008, 2846).

56 Act to Combat Forced Marriage, Improve Protection for Victims of Forced Marriage and Amend Further Residence and Asylum Regulations (Federal Law Gazette I 2011, 1266).

57 Act to Implement European Union Residence Directives and Adapt National Law to the EU Visa Code (German) (Federal Law Gazette I 2011, 2258).

58 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Beyond the level of federal acts that have to be passed by parliament and, in most cases, by the assembly of the Länder in the second chamber (Bundesrat), a number of ordinances on the federal level specify the statutory framework for residence, employment and integration of foreigners and the procedures for dealing with asylum seekers, as well as the conditions of their accommodation and assistance. Ordinances are decreed by the Federal Government or the responsible Minister and in the majority of cases require consent of the Bundesrat (cf. 2.1).

- The Residence Ordinance (AufenthV) governs all questions related to entry into and residence in the Federal Territory, fees, administrative as well as procedural provisions for granting residence titles.
- The Employment Ordinance⁵⁹ regulates the procedures of admission regarding foreigners abroad aiming at coming to Germany for gainful employment, and enumerates the occupations coming into question.
- The Employment Procedure Ordinance⁶⁰ is the counterpart of the Employment Ordinance, governing the conditions for taking up employment for foreigners legally residing in Germany.
- The Ordinance on Integration Courses⁶¹ specifies the implementation of integration courses foreseen in the Residence Act, i.e., the framework for participation, data processing, fees, as well as structures, duration and content of the courses. Furthermore, it regulates the certification proceeding for public/private course providers.
- In the area of asylum, procedures are exhaustively covered by the Asylum Procedure Act and the Asylum Seekers' Benefits Act. However, in terms of organisational responsibilities, the Ordinance on Determining Asylum Competences⁶² needs to be mentioned: It contains provisions on competences and responsibilities of the main operative bodies, according to important EU-regulations such as the Dublin - II Regulation or the "Eurodac"-system.

59 Ordinance on the Admission of Foreigners for the Purpose of Taking up Employment (Beschäftigungsverordnung – BeschV) of 22 November 2004 (Federal Law Gazette I, No. 62, 2937), last amended by the second ordinance amending the Employment Ordinance of 19 December 2008 (Federal Law Gazette I, 2972).

60 Ordinance on Official Procedures Enabling Resident Foreigners to take up Employment (Beschäftigungsverfahrensverordnung – BeschVerfV) of 22 November 2004 (Federal Law Gazette I, No. 62, 2934), last amended by Article 7 Paragraph 2 of the law of 21 December 2008 (Federal Law Gazette I, 2917).

61 Ordinance on the Implementation of Integration Courses for Foreigners and Repatriates (Integrationskursverordnung – IntV) of 13 December 2004 (Federal Law Gazette I, 3370), last amended by the First Ordinance Amending the Ordinance on Integration Courses of 5 December 2007 (Federal Law Gazette I, 2787).

62 Ordinance Amending the Ordinance Determining Asylum Competences (Asylzuständigkeitsbestimmungsverordnung – AsylZBV) of 2 April 2008 (Federal Law Gazette I, 645).

3 Formation of the Asylum and Migration Systems

3.1 Historical Overview of Migratory Movements since 1945

After World War II (between 1945 and 1949), nearly 8 million German refugees and persons displaced by the war went to the western occupied zones, while approximately 3.6 million went to Soviet-occupied East Germany. The founding of the Federal Republic of Germany and of the German Democratic Republic in 1949 led to mass migration from East to West Germany. Until the Berlin Wall was erected in 1961 approximately 3.5 million people had crossed the intra-German border to remain permanently in the Federal Republic of Germany. In addition to an economic boom starting in the 1950s, several factors – among others the introduction of liability to military service, the factual extension of the average time in education or apprenticeship through the educational expansion and reduced female labour force participation due to the “baby boom” – contributed to the fact that no more than 14 years after the defeat in 1945, full employment was reached (cf. Münz et al. 1999: 44): Particularly the demand for unskilled and semi-skilled labour grew beyond what could be filled by the domestic workforce. This deficit led to the recruitment of foreign “guest workers”.

Foreign workers were recruited between 1955 and 1973 through recruitment agreements between the Federal Republic and Italy (1955), Spain and Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968; cf. Steinert 1995). In 1960, 1.3 percent of the workforce consisted of foreigners. This percentage had risen up to 11.9 percent by 1973. The early 1970s marked what migration researchers termed the “take off” in the recruitment of foreign workers (Münz et al. 1999: 43).

Originally, the plan was for recruited guest workers to only remain for a limited period of time (“rotation principle”); however, beginning in the late 1960s, a

growing percentage of these immigrants ended up remaining in Germany permanently. In 1973, the recruitment of foreigners from countries outside of the European Community was banned due to the oil crisis. At the time of the recruitment ban around four million foreign citizens were already living in West Germany, with this number increasing continually in the following years primarily due to family reunification. In 1989, the number of foreigners in the resident population of the Federal Republic was just under 4.9 million.⁶³

Foreigners in the German Democratic Republic

Beginning in the mid-1960s, “foreign workers” were also recruited in the German Democratic Republic based on intergovernmental treaties; however, this occurred at a far lower rate than in the Federal Republic. Initially the workers came largely from COMECON (Council for Mutual Economic Assistance) States. Later there were immigrants from Algeria, Cuba, Mozambique, Vietnam, Mongolia, Angola and China (cf. Elsner/Elsner 1994)

Statutory regulations in the German Democratic Republic on general rights and duties of foreign labourers and their families were, however, relatively vague. Beyond questions related to German citizenship, they were generally granted equal rights, but their status was much at the discretion of the authorities (Sachverständigenrat 2004: 112). Contrary to the Federal Republic, the rotation principle was strictly enforced. Families of guest workers were denied permanent residence and integration was rendered practically impossible. According to sources from the German Democratic Republic, the percentage of foreigners in the labour force ranged at just about 1 percent.

⁶³ For a brief overview see Özcan (2007).

Ethnic German Repatriates

Since the early 1950s, ethnic German repatriates (German: Aussiedler) and their families have comprised another continuous migratory movement to Germany. The admitted repatriates (since 1993 “late” repatriates) are persons of German descent from the successor states of the Soviet Union and other former states of the Warsaw Pact. Thus, in clear distinction from foreign migrants, they constitute a special category of immigrants. Ethnic Germans, in the aftermath of World War II, have been persecuted in these regions, and even several decades after the war’s end, they were substantially disadvantaged in some cases. Provided that repercussions of this discrimination persist today, victims and their family members who are not considered ethnic Germans themselves are admitted in Germany within the framework of a special reception procedure. By issuance of a certificate confirming their status as late repatriates they are awarded German citizenship by act of law.

Since 1950, more than four million ethnic German repatriates have emigrated to the Federal Republic, forming the third largest immigration movement next to German refugees and displaced persons from former German territories in Eastern Europe and admission of labour migrants in the “guest worker period”. From 1990 to 2010, a total of 2.5 million ethnic German repatriates moved to Germany. With the 1993 Act for the Settlement of Long-Term Consequences of War⁶⁴, the emigration quota for ethnic German repatriates was set to 225,000 per year, then to 103,000 per year starting in 2000. However, the actual emigration figures have been considerably lower (cf. 3.3).

Asylum Seekers

The admission of asylum seekers in the Federal Republic has been recorded since the early 1950s. Until the end of the 1970s, immigration for asylum played a quantitatively small role and consisted primarily of refugees from the former Eastern Bloc countries. After a first peak in 1980 (107,000 applications) and then in 1985, the number of asylum seekers from third countries increased dramatically and continued to

increase from 1988 (103,000 applications) onward. The peak for asylum applications (approximately 438,000) was set in 1992.

In 1993, amendments of the asylum laws came into force, severely curbing the number of asylum seekers. Since 1998, the number of first-time asylum applicants has been less than 100,000 per year. For some years now, the migration of refugees/asylum seekers has been no outstanding category of migration in quantitative terms anymore, reaching in 2007 the lowest number (19,164) of first instance applications for asylum since 1983 (cf. 3.3). Since then, however, considerable increases have once again been observed.

Refugees of War or Civil War

As early as 1979, Germany launched initial programmes for distinct groups of refugees of war or civil war. Based on the Quota Refugee Act⁶⁵, several thousand refugees came to Germany. During the war conflict in Bosnia and Herzegovina from 1991 to 1995, approximately 345,000 Bosnian refugees were admitted to Germany. However, the vast majority have left since then. Since 1999, Germany has granted protection for 195,000 refugees from Kosovo, the majority of whom have also returned. In the first half of 2009, within the framework of a European resettlement initiative to take in at least 10,000 refugees from Iraq, a total of 2,501 refugees from Iraq who fled to Syria and Jordan were resettled in Germany. Admission took place pursuant to section 23(2) Residence Act ‘in order to safeguard special political interests of the Federal Republic of Germany’. Already in 2010, on the same legal grounds and within the framework of the EU pilot ‘Project for intra-EU relocation from Malta’ (EUREMA). Germany admitted 102 refugees from Malta, who foremost came from Somalia, Eritrea and Sudan. In the same year, Germany agreed to admit in special individual cases Iranian refugees who are in need of protection from Iran’s massive repressive measures against the opposition. Thereby, the main focus of the German participation is with Iranian refugees from Turkey. Since 2010, already 50 of these

64 Act to Resolve Acts on Long-Term Consequences of War (Gesetz zur Bereinigung von Kriegsfolgegesetzen [Kriegsfolgenbereinigungsgesetz] – KfbG) of 21 December 1992 (Federal Law Gazette I, p. 2094).

65 Act on Measures for Refugees Admitted in the Course of Humanitarian Aid Programmes (Kontingent-flüchtlingsgesetz) of 22. 07. 1980 (Federal Law Gazette I, 1057); ceased to be in force and merged into the Residence Act.

refugees have entered Germany. During the German participation in UNHCR's Resettlement Program, the Standing Conference of the Federal States' Ministers of the Interior decided in December 2011 to annually admit 300 refugees during the following three years. In 2012, 195 persons who fled to Tunisia as well as 105 Iranian refugees from Turkey have been admitted to Germany within the framework of the Resettlement-Program.

Jewish Immigrants

Jewish migrants have also been moving to Germany from former Soviet Union states since the 1990s. Jewish immigrants are admitted on the basis of an agreement between the Prime Ministers of the Federal States. Roughly 200,000 applicants have entered the country between 1993 and 2010, giving Germany the third largest Jewish community in Europe next to France and Great Britain at 104,000 persons in 800 communities (cf. BAMF 2012). Over the past few years, however, immigration rates have fallen noticeably (cf. 3.3). The downtrend can be attributed primarily to alterations in legislation and proceedings as well as to a more restrictive issuance of visas. In November 2005, the Länder Ministers of the Interior had introduced new framework conditions for admitting Jewish immigrants⁶⁶, as with the coming into force of the Immigration Act, the Quota Refugee Act, which had been applied to Jewish immigrants accordingly, had ceased to exist. Since then, amongst other things, entry conditions require that immigrants are able to support themselves without the aid of social welfare, have basic knowledge of the German language and proof that there is a possibility for them to be admitted to a Jewish congregation within the Federal Territory.

3.2 Evolvement of Institutions dealing with Migration and Asylum

Legal Background

The legal basis for foreigners' residence remained virtually unaltered for the three western occupied zones during the first two decades following World

War II, as well as for the subsequent Federal Republic of Germany. An important legal frame was defined by special police regulations applying to foreigners⁶⁷, dating from 1938 (cf. Renner 1998: 22). These regulations were de-nazified of any discriminatory language after the war and their use continued until their legacy was dissolved in the mid-1960s.

Special rules were created at the beginning of the 1950s only for displaced aliens and foreign refugees. After the ratification of the United Nations Convention Relating to the Status of Refugees in Geneva in 1953, an independent legal basis in the form of the Asylum Ordinance⁶⁸ was created. In 1965, The Aliens Act⁶⁹ came into force, regulating central questions pertaining to foreigners and their status of residence in the Federal Territory. While its general bias was rather restrictive, this new act contained no provisions regarding immigration and allowed for wide administrative discretion on the Foreigners Authorities' side. Only with the new Aliens Act of 1990⁷⁰, the possibilities of being granted citizenship were expanded and more legal protection was created for immigrants.

In the light of ever-increasing numbers of asylum applications at the beginning of the 1990s, in 1993 the "asylum compromise" was passed into law after an intense debate. By amending the constitutional Basic Law and revising the Asylum Procedure Act⁷¹, it restricted the basic right to political asylum with the concept of safe countries of origin, the third-country regulations and the Airport Procedure.

67 Aliens Police Ordinance (Ausländerpolizeiverordnung) of 22 August 1938 (Reich Law Gazette I, 1053).

68 Ordinance on the Recognition and Distribution of Foreign Refugees (Verordnung über die Anerkennung und Verteilung von ausländischen Flüchtlingen – AsylVO) of 6 January 1953 (Federal Law Gazette I, 3).

69 Aliens Act (Ausländergesetz – AuslG) of 28 April 1965 (Federal Law Gazette I, 353).

70 Act on the Entry and Residence of Foreigners in the Federal Territory (Ausländergesetz – AuslG) of 9 July 1990, promulgated as article 1 of the Act of 9 July 1990 (Federal Law Gazette I, 1354).

71 39th Act to amend the Basic Law of 28 June 1993 (Federal Law Gazette I, 1002); Asylum Procedure Act (Asylverfahrensgesetz – AsylVfG) of 27 July 1993 (Federal Law Gazette I, 1361).

66 Cf. Standing Conference of the States' Ministers and Senators of the Interior, "Admission of Jewish Emigrants from the former Soviet Union, with the exception of the Baltic States", Circular Resolution of 18. 11. 2005 (Az.: IV E 3.10; in German).

Regarding citizenship and naturalisation, the new Nationality Act⁷² of 1 January 2000 introduced elements of *ius soli* (right to citizenship by place of birth) to children born to foreigners in Germany. For adults, the requisite duration of residency was reduced and a language test was introduced as part of the naturalisation procedure. The last fundamental reform within the statutory framework was marked by the coming into force of the Immigration Act in 2005; since then, the Residence Act in particular has been updated on various occasions.

Operating Bodies

In 1953, the Convention Relating to the Legal Status of Refugees was transposed into national law of the Federal Republic of Germany as the Asylum Ordinance, forming, *inter alia*, the Federal Office for the Recognition of Foreign Refugees⁷³ in Nuremberg. With the Aliens Act of 1965, the Office was renamed⁷⁴ and became a superior federal authority under the Federal Ministry of the Interior (BAFI 2003: 156).

The Aliens Act of 1965 rendered the issuance of residence titles to the authority of the Foreigners Authorities, provided the residency was not contrary to German interests. The Foreigners Authorities on the Länder and local levels were also responsible for granting protection from deportation, while recognition boards in the Federal Office for the Recognition of Foreign Refugees were responsible for deciding on asylum applications.

In 1978 the Federal Government created the position of a Commissioner for the Integration of Foreign Workers and Their Families⁷⁵, the precursor of today's Commissioner for Migration, Refugees and Integration. The Commissioner remained relatively ill-equipped in the initial years and primarily had consultative and reporting functions within government. This changed beginning in the late 1990s, when the

number of staff was gradually increased. Since 2005, the Commissioner even has the rank of a Minister of State (cf. 2.3.1).

With the Aliens Act reform of 1990, the authority to recognise refugee status according to the Convention was transferred from the Foreigners Authorities to the Federal Office. In the course of the growing number of refugees, the central decision-making process once located exclusively in Zirndorf was decentralised and several branch offices were created. At their peak there were as many as 48 branch offices; currently there are 22. The Immigration Act of 2005 was the impetus to rename the "Federal Office for the Recognition of Foreign Refugees" as the present-day "Federal Office for Migration and Refugees" (BAMF). The office's structural organisation was adjusted accordingly and it was given additional responsibilities (cf. 2.3.2). Since the mid-1990s, the BAMF is headquartered in Nuremberg.

3.3 Statistics on the different Migrant Groups in Germany⁷⁶

In 2011, the foreign population of Germany amounted to roughly 7.4 million.⁷⁷ Of that number, more than one third came from Member States of the EU and more than four million were citizens of a third country beyond the European Economic Area. In 2005, the Federal Statistical Office introduced the concept of "migration background" in order to statistically account for those people with a history of migration in their family, that were born as Germans or naturalised in the course of time (immigrants and their descendants). Thus, the population group with a migration

72 Nationality Act (Staatsangehörigkeitsgesetz – StAG), rectified version published in the Federal Law Gazette III, classification number 102-1, last amended by Article 1 of the law of 5 February 2009 (Federal Law Gazette I, 158).

73 Bundesdienststelle für die Anerkennung ausländischer Flüchtlinge

74 Bundesamt für die Anerkennung ausländischer Flüchtlinge (BAFL)

75 Cf. 2.3.1.

76 If not otherwise noted, figures are adapted from Federal Statistical Office Germany.

77 According to the current population statistics of the Federal Statistical Office, the number of foreigners residing in Germany on 31 December 2011 ranged at 7,369,900; the Central Aliens Register (AZR) as the second pivotal data source on foreigners statistics, however, reported 6,930,896 foreigners as of 31 December 2011 (and 6,694,776 as of 31 December 2009). The results differentiate mainly due to variations in survey methodology. As a matter of fact, the numbers provided by the AZR have to be somewhat lower than those resulting from the projective population statistics based on the 1987 census and is a case statistic, since the AZR is a person statistic and does not account for foreigners settling on a short-term-basis only. Yet it remains unclear, whether the current gap of about 675,000 people is fully attributable to this cause (Statistisches Bundesamt, Fachserie 1, Reihe 2, 2011, 4).

background consists of all foreigners, all immigrants (whether with German or foreign citizenship) who have migrated into Germany after 1949, and of all German nationals born in Germany who have at least one parent who immigrated into the country (in or after 1950) or was born as a foreigner in Germany. According to current statistical data based on the German micro-census, about 15.7 million people in Germany had a migration background in 2010 – about every fifth citizen. This constitutes more than an additional 43,000 people in comparison to 2009. More than half (8.6 million or 8.5% of the general population) of those with migration background had German nationality. The number of annual naturalisations particularly increased in the late 1990s, and after the reform of German nationality law in 1999 – from 82,913 in 1997 to 186,688 in 2000. However, between 2002 and 2008, the number has been going down considerably. Since 2009, naturalisations have been slowly increasing again. In 2011, more than 101,000 foreigners were naturalised.

Rough General Migration Balance

During the 20 years between 1991 and 2010, about 18 million people (foreigners and German citizens) have moved into the territory of the Federal Republic of Germany, yet of that number, nearly 14 million have since left. Following the heydays of immigration in the early 1990s with sometimes more than one million people coming every year, the annual migration balance has decreased considerably, with the amount of influx barely exceeding the amount of outflux over the last decade; in 2008 and 2009, net migration was even negative. Since 2005, overflows are mainly supported by the influx of foreigners, while there was a larger number of German citizens leaving the country, than coming back in (cf. BAMF 2012: pp. 14).

Current Figures

The main categories for immigrants from third countries are the following:⁷⁸

■ *Spouses or Family Members Reunifying*

Family reunion immigration has been decreasing for some years (cf. Kreienbrink/ Rühl 2007). While the number of visas issued for this purpose stood at 85,000 in 2002, this number has fallen by more than half (40,210 in 2010). Among other reasons, this drop may be attributed to the fact that since the EU-accession, citizens of quite a number of states, who used to require a visa, now enjoy freedom of movement. Thus, they are not incorporated in the statistics on family reunion.

■ *Ethnic German Repatriates*

The immigration figures for this group between 1993 and 1995 were over 200,000 per year. These figures have continuously fallen since then. In 2011, a total of 2,148 people (including family members) marked the lowest influx of ethnic German repatriates since the beginning of the initiative.

■ *Refugees and Asylum Seekers*

Likewise, there was a strong downward trend in the figures of asylum seekers and refugees over many years. 19,164 first-time applications were made in 2007 along with 11,139 subsequent applications, which marks the lowest stage since 1983. Since then, an increase in refugee figures has been recorded. In 2010, a total of 41,332 first-time applications were filed (with 7,257 repeat applications), then 45,710 first-time and 7,606 repeat applications in 2011. The increase is primarily from the countries of Afghanistan (increase of 31.5% from previous year), Iran (35.4%) and Syria (76.8%). With a total of 42,362 asylum decisions made in 2011, a total of 7,098 people (16.4%) were granted refugee protection as per the Geneva Convention on Refugees; of those, 652 (1.5% of all decisions) were granted asylum as per Art. 16a Basic Law. Furthermore, deportation bans and subsidiary protection were granted to 2,577 people (5.9%).

■ *Labour Migrants*

Despite the fact that Germany keeps up a general recruitment ban in principle, there are a number of legal bases for labour-oriented migration nested

⁷⁸ Figures are taken from the annual Migration Report, drafted by the Federal Office for Migration and Refugees on the basis of the official statistics of the Federal and States' Statistical Offices, as well as other authoritative sources, such as the Central Aliens Register (cf. BAMF 2008: 7-10). However, due to the varied survey methods and different databases, the individual figures cannot be summarized to a total of immigrants.

within the Residence Act and associated ordinances.⁷⁹ Thus, 36,049 third-country nationals who entered in 2011 received a (temporary) residence permit for work according to section 18 Residence Act (25,053 in 2009 and 28,298 in 2010). In the same year, 370 highly qualified and 1,347 self-employed foreigners, along with 317 researchers came on the basis of the according regulations (sections 19, 20 and 21 Residence Act). Besides, not unimportant in numerical terms are seasonal workers, contract workers and showmen assistants, who can work in Germany temporarily on the basis of bilateral agreements (cf. 4.1.4.2). In 2010, a total of 293,711 placements of seasonal workers and showmen assistants (who were employed for up to six months per year) were registered. The overwhelming majority, however, came from EU-accession states; the number of placements from Croatia, the only third country from which seasonal workers and carniés have been recruited, stood at 4,753. There was an average of 17,981 contract workers employed in Germany in 2010, just about half of whom (7,298) came from non-EU-states.

■ *Foreign Students*

65,175 foreigners picked up their studies at a German university in the winter semester of 2011/2012. This equals 14.7 percent of all freshmen. At the same time, a total of 263,848 students with foreign nationality were enrolled, marking a quota of about 11.1 percent of all university students enrolled in German universities (2,377,034). Among the foreign students, about three quarters (73.4 percent in the winter semester 2010/2011)

held their university entrance qualification (High School diplomas or A-levels) from non-German institutions ("educational foreigners") and have come to Germany for their studies.

■ *Jewish Immigrants*

In 2010, the entry of a total of 1,015 Jewish immigrants and their families from the successor states of the Soviet Union marked the lowest number of this group so far. While between 1993 and 2004 an average of 16,000 Jews immigrated per year, this average figure diminished to 2,700 p.a. between 2005 and 2008, which was due to a decision to reform the conditions for admission at the end of 2004 (cf. 3.1). The decrease in figures reflects the dwindling number of Jews willing to move abroad, but may also be attributed to an improvement in living conditions in their countries of origin.

79 As Germany continues limiting the free movement of workers from the new middle- and eastern-European Member States of the EU and thus, foreigners from these states are registered collectively with Third-country nationals, it is impossible to determine accurate total figures for labour migrants from third countries. For details on these exceptional regulations see section 4.1.4.2 of this study.

4 Procedural Organisation of Policies

4.1 Administrative Procedures and Legal Bases of Asylum and Migration Policy

4.1.1 Entry

The entry and residence of foreigners in the Federal Territory is generally authorised only with a recognised and valid passport or travel documents in lieu of passport (passport substitute; section 3(1) Residence Act). As a matter of principle, entry and residence generally require a residence title in the form of a visa, a residence permit, a settlement permit or a European Community permanent residence permit. The detailed provisions are laid down in the Schengen Borders Code⁸⁰, the Visa Code⁸¹, the Visa Regulation⁸² and the Residence Ordinance. According to the Schengen Borders Code and the Visa Code, the issuance of a visa must depend on whether or not the applicant poses a risk of illegal immigration, to the security of the Member State or intends to leave the territory of the Member State before the expiration of the applied visa. The General Administrative Regulation of the Residence Act also sets forth as a “concrete entry requirement” – case by case determination of each applicant’s

intent to return following completion of the purpose of stay (cf. Parusel/Schneider 2012: 51).

Crossing the Border

Entering and leaving the country is only permitted at authorised border crossing points during standard operating hours (section 13 Residence Act). Foreigners crossing the German border are generally obliged to carry a passport or a passport substitute.

4.1.1.1 Asylum and Refugees

Entry and Distribution of Asylum Applicants

Refugees can only file a claim for asylum within Germany; it is not possible to apply for an entry visa for this purpose. The asylum seeker must first report in person to an initial reception centre. If an asylum seeker requests asylum at the border agency, he/she is transferred to the nearest initial reception centre. This however does not apply when there are sufficient grounds to refuse entry, such as for example when entering from a safe third country. In this case, Border Agencies may turn away the foreigner. Generally, requests for asylum can be made with any authority, even the police. The refugee will then be directed to the proper authorities.

The establishment of reception centres and the accommodation of asylum applicants therein are the responsibilities of each Federal State. The initial reception centre responsible for an asylum seeker’s accommodation is ascertained with the aid of the EASY national distribution IT-system (system for the initial distribution of asylum-seekers). The reception quotas of each individual Federal State are determined by a special distribution coefficient, the so-called Königstein key, which is calculated each year based on the tax revenue and population size of each Federal State (cf. BAMF 2008b: 11-13). There are 22 initial reception centres in Germany. After a maximum of three

80 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

81 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). The Visa Code has since then replaced the Common Consular Instructions (GKI) and other visa-related legislation; cf. synopsis in Annex XIII of Regulation (EC) No. 810/2009.

82 Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

months in the initial reception centre, the refugees are assigned to a specific city or district based on the quota.

4.1.1.2 Migration

Visa Procedure

Foreigners require a residence title, which can be granted in the form of a visa, a (temporary) residence permit or a settlement permit. Third-country nationals generally require a visa for stays in Germany; however, for citizens of some countries the European Community has abolished the visa requirement (section 4(1) no. 1 Residence Act in conjunction with section 6 Residence Act, Article 1 EC Visa Regulation⁸³ and Annex I EC Visa Regulation). Visas for short-term residence for up to three months are to a large extent regulated according to EU law. For the national visa, which is required for a longer period of residence or in case gainful employment is intended, the general regulations outlined in the Residence Act and the Residence Ordinance apply. National visas are issued upon inspection of the general issuance requirements as outlined in section 5 Residence Act and the special issuance requirements of the intended purpose of stay. With short-term Schengen visas, Diplomatic Missions must specifically inspect the purpose of stay and repatriation readiness (decided at the involved mission's own discretion).

Processing visa applications is under the purview of the German embassies and Consulate Generals (Diplomatic Missions; section 71(2) Residence Act). It is necessary for the application procedure that the applicant files his/her application in person at the Diplomatic Mission which is responsible for his/her country of residence. It can certainly take many weeks or even months to process visa applications, especially since other authorities are involved in the process, such as the Foreigners Authority at the intended destination in Germany or - via the Foreigners Authority - the Federal Employment Agency, in those cases where residence should be for employment purposes and the respective profession is subject to the agency's approval

(see 4.1.6.2). Visas for foreign students are, on the other hand, issued in an expedited procedure. While the visa may generally require the express authorisation of the Foreigners Authority at the future place of residence, failure by this authority to object with the diplomatic mission at which the visa was requested within a period of three weeks and two business days (objection period) constitutes consent and the visa is issued (cf. BMI/BAMF 2011: 58 and Parusel/Schneider 2012: pp. 23, pp. 30 for extensive information on the visa process for short-term and long-term stays).

Preventing Irregular Migration and Consultation Procedures on Threat Prevention

After checking the validity of the visa application, the information on the application is entered into the Federal Foreign Office's electronic workflow management system. This information is automatically transferred to the Federal Office of Administration, where the general Central Aliens Register, the Central Aliens Register for Visa Files and the Schengen Information System (SIS) databases are queried. The results of the check are then sent back to the Federal Foreign Office using an extensively automated process.

On 11 October 2011, the EC's Visa Information System (VIS) was brought into operation in the first application region in North Africa.⁸⁴ It serves to improve the execution of the common visa policy, consular co-operation and consultation by facilitating the exchange of data between Member States on visa applications and the respective decisions. Among other purposes, it should also assist in contributing to the simplification the visa application process, prevention of "visa shopping"⁸⁵ and contravention of risks of the internal security of Member States. Biometric data is taken from applicants and processed as part of the VIS system in order to issue a Schengen visa, which should simplify the application and issuance process for said Schengen visas.

83 Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempted from that requirement.

84 Decision of the Council of 8 June 2004 establishing the Visa Information System (2004/512/EC); Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System and the exchange of data between Member States on short-stay Visas (VIS Regulation).

85 "Visa shopping" is the practise of applying consecutively for visas with the visa offices of multiple Schengen States until the office with the lowest verification standards issues a visa.

In essence, the EU visa procedure for short-term stays includes the possibility for a consultation procedure with the primary purpose of alleviating the security concerns of Member States. According to Art. 22 Visa Code, a Member State can require that the central authorities of other Member States consult their own central authorities when assessing applications submitted by nationals of specific third countries or by specific groups of nationals from these countries.⁸⁶ The consulted authorities must respond to the application within seven calendar days of receipt. Failure to do so constitutes no objections against issuing the visa. This Schengen consultation procedure has been expanded in German law by section 73 Residence Act to include national provisions. Since 1 February 2009, in addition to the host, the signee of a declaration of commitment (German: "Verpflichtungserklärung") shall be assessed pursuant to the EU-Directives Implementation Act, too. The procedure, which used to be tracked by the Federal Foreign Office, is processed by means of a consultation computer in the Federal Office of Administration. Beyond this national consultation procedure, pursuant to section 31(1) Residence Ordinance, the issuance both of national visas and visas from countries that induce consultation, as well as visas for taking up employment generally require the consent of the Foreigners Authorities. The German Bundestag enacted the creation of a central Visa Warning File in November 2011 on the initiative of the Federal Government to prevent visa abuse and illegal entry, and in particular to prevent human trafficking and human smuggling.⁸⁷ Accordingly the Federal Administrative Office will set up a central warning file that primarily serves to prevent visa abuse and combat illegal entry. Upon the commencement of the Act in mid-2013, the file will contain warning information on persons who have been sentenced by law to a fine or imprisonment for certain offences relevant to the visa process. The German Visa Warning File supplements the above mentioned EU Visa Information System.

Decision by Diplomatic Mission

The relevant Diplomatic Mission renders a decision regarding the application following the results of its enquiry of various databases, the consultation procedure and (if necessary) the requisite consent of the relevant Foreigners Authority. Grounds for the decision shall not be given, nor any instructions on a right to appeal. Applicants have one year to appeal a decision. All appeals must be made to the Administrative Court in Berlin.

In 2011, German Diplomatic Missions handled over 1.9 million visa-applications. Thus, 1,621,745 Schengen-visas (1,612,355 in 2010) and 162,258 national visas (142,749 in 2010) were issued, while 143,984 visa applications were rejected in the written form (155,280 in 2010).⁸⁸

Jewish Immigrants

A special application procedure is foreseen for Jewish Immigrants from the States of the Former Soviet Union, with the exception of the Baltic States (cf. 3.1, 4.1.2.2). Applicants can apply in person at the German Diplomatic Mission in their country of origin that is responsible for the district in which they currently reside. The application is then forwarded to the Federal Office for Migration and Refugees, where all documentation is assessed also with regards to whether all application requirements have been met. A prognosis is then made regarding integration, which is shared with the Central Welfare Office of Jews in Germany (cf. 4.1.2.2). The Federal Office for Migration and Refugees decides on reception, determines to which Federal State the persons will be assigned and which residence title is to be issued by the Foreigners Authority. The decision regarding reception is forwarded through the Diplomatic Mission and is valid for one year after notification. The Diplomatic Mission then issues a visa based on that decision (BMI 2011: 152).

Irregular Migrants/Illegal Entry

Persons from third countries entering the Federal Territory without a visa are turned away at the border by the responsible Border Agency, unless they apply for asylum or the respective authority issues an excep-

⁸⁶ This consultation requirement does not apply to applications for transit visas.

⁸⁷ Cf. Bundestag Plenary Minutes 17/146 (German) of 1 December 2011, 17,469/17,470A.

⁸⁸ Information provided by the Federal Foreign Office (cf. www.auswaertiges-amt.de).

tional visa and passport substitute documents (section 4(2) Residence Act). Citizens of third countries who are in Germany illegally can be defined as those who do not, or no longer fulfil the conditions for entry and residence. The fight against unauthorised entry and trafficking in migrants is conducted in close cooperation between public authorities and departments, an example for which is the Joint Analysis and Strategy Centre for Illegal Migration (GASiM)⁸⁹. The Centre is an inter-departmental knot for mutual information and cooperation of public authorities aimed at intensifying collaboration in cracking down on illegal migration and associated or succeeding delinquency.

Control mechanisms include data exchange, the inspection of places of employment, close cooperation between authorities and the obligation to transmit information of public offices (cf. Sinn et al. 2006: 137). Thus, the latter are obliged to report foreigners who are not in possession of a valid residence title to the proper Foreigners Authority or Police Office either independently or upon enquiry (section 87(2) Residence Act).

As part of the second Directive Implementation Act, an exception to the obligation to transmit information as per section 87(1) and (2) of the Residence Act was introduced for schools and other educational institutions. Access to medical care had already been made easier for irregular migrants back in 2009 by corresponding requirements in the General Administrative Regulation of the Residence Act. Accordingly, the administrative personnel of public hospitals who are in charge of billing are exempted from this obligation in cases of medical emergency. Even social authorities that become aware of an illegal residence due to billing for emergency services are no longer obliged to inform the Foreigners Authorities (see also 4.2.4).

Pursuant to section 63(1) Residence Act, a carrier may only transport foreigners to Germany who are in possession of a requisite passport and residence title.

Since 1998, the Federal Police have enlisted “document consultants” to conduct training for, and provide consultation to, airline companies, airport operators abroad and even foreign border agencies (cf. Schneider 2012: pp. 46 on the activities of the Federal Police to prevent irregular migration).

Foreigners that have nevertheless entered the country without authorisation and who are neither seeking asylum nor can be held in custody pending deportation are distributed among the Federal States (section 15a Residence Act) in order to apportion costs (cf. Groß 2006: 44).

4.1.2 Admission Procedure and Obtaining a Residence Title

Upon entry, generally, the municipal Foreigners Authorities are the competent administrative bodies for all residence- and passport-related measures and rulings. The following prerequisites apply for a residence title to be issued (following section 5 Residence Act):

- Secure means of subsistence; this is assumed when the applicant can provide his/her livelihood (including medical insurance) without requiring public funding;
- Known identity and, provided the foreigner is not entitled to return to another country, nationality of the foreigner;
- No grounds for expulsion;
- No objection to the issuance of a residence title and no reason to presume the foreigner’s residence does not compromise or jeopardise the interests of the Federal Republic of Germany;
- Possession of a recognised and valid passport or travel documents in lieu of passport.

The issuance of a residence or settlement permit usually requires the foreigner to enter the country with a visa (upon established requirement of a visa) and to have already given the relevant information in his/her visa application (cf. 4.1.1). The residence permit is granted for a certain purpose and a limited period of time only (with the possibility of extension), while the settlement permit is granted for an unlimited time

89 Gemeinsames Analyse- und Strategiezentrum illegale Migration. For a description of the centre’s tasks and organisational competences cf. chapter 4.2.3 and the Federal Governments’ answers to the minor interpellations by the parliamentary groups Die Linke and Bündnis 90/Die Grünen, respectively, BT-Drs. (printed paper) 16/2420 of 18 August 2006, BT-Drs. (printed paper) 16/2432 of 23 August 2006 and BT-Drs. (printed paper) 16/11636 of 21 January 2009.

and without any further restrictions. The latter allows the bearer to pursue any sort of gainful employment or self-employment.

4.1.2.1 Asylum and Refugees

If a third-country national claims asylum in the territory of one Member State or another state which applies the Dublin-II Regulation, this state, in accordance with the criteria laid out in the Regulation, examines which (Member) State is responsible for processing the asylum application.

Applications

The Federal Office for Migration and Refugees is responsible for rendering a decision regarding the application for asylum. According to section 13(2) Asylum Procedure Act, each asylum application automatically applies for refugee protection pursuant to the Geneva Refugee Convention and, if the applicant does not expressly decline, recognition of right to asylum as per Basic Law. In addition, the authorities will check for deportation bans following section 60(2), (3), (5) or (7) Residence Act - the claimant is granted a preliminary entitlement to remain in the country, even if the asylum claim has been declined (subsidiary protection; cf. Parusel 2010). When the Federal Office for Migration and Refugees receives an application for asylum, it must first decide whether or not to conduct asylum proceedings at all. Approximately one-quarter of all applications for asylum are not even evaluated beyond this initial phase. This can be the case when, for example, another European country is responsible for conducting the asylum procedure (cf. below, “Dublin” procedure). In continuation of the responsibility of the federal states for initial reception (cf. 4.1.1.1), the local Foreigners Authorities are also subject to the residence arrangement during and after completion of the asylum procedure.

Formal applications for asylum must usually be made in person at the Federal Office for Migration and Refugees. Its branch offices are each assigned to a central initial reception centre in which asylum seekers must live for a certain period of time following their arrival. All asylum seekers of 14 years of age and older are photographed and fingerprinted. In addition, asylum seekers must yield all personal papers and documents

pertaining to their route. An asylum file is subsequently created for the applicant at the branch office. Personal data is entered into the MARiS IT-system (MigrationAsylumReIntegrationSystem) in order to determine whether the applicant is filing for the first or second time, or has filed multiple times. The fingerprints are run through the AFIS-system at the Federal Criminal Police Office (cf. 2.3.2) and compared with police records. They are then run through the Central Aliens Register as well as the central automatic European fingerprint identification system Eurodac to determine whether the applicant has already filed an application for asylum in another Member State.⁹⁰ This screening of data is particularly relevant for the Dublin procedure (see below). The asylum applicant is issued a residence authorisation, granting him/her an interim right of residence to conduct his/her asylum proceedings.

Dublin Procedure

According to the Dublin-II Regulation⁹¹, within the framework of each individual asylum procedure undertaken in an EU Member State or a third country associated with the Schengen/Dublin acquis, first of all the state responsible for processing the asylum application has to be determined. The so-called Dublin procedure legally takes place before the actual and substantial examination of the asylum application. It is legally triggered by filing an asylum claim inside of the “Dublin-area”.

Nevertheless, filing an application for asylum in Germany is not necessarily required; even for so-called apprehension cases (apprehension of illegally resident third-country nationals, who have filed an asylum claim in another Dublin state) the Dublin procedure is effective.

Actually, however, the procedure to determine the responsibility is oftentimes incorporated as part of the

90 Cf. Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention.

91 Cf. Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third-country national.

asylum procedure, and is then carried out by the Federal Office for Migration and Refugees as well: After filing the asylum application in one of the BAMF's 22 branch offices, an asylum case officer carries out the interview (see below). In the course of this interview, clues as to the responsibility of another Member State pursuant to the Dublin-II Regulation may evolve; possibly, however, such clues or evidence result from other sources such as existing asylum cards from another Member State or the comparison of available identification data (e.g., photographs or fingerprints taken in accordance with the Eurodac system; see above). In that case, the asylum file is transferred to a separate section specialised in carrying out Dublin proceedings.⁹² This is where further examination of such indications or means of evidence and a decision as to whether a request to take charge of or to take back the applicant is posed (cf. Lang 2008: 22). In cases of only slight chances, or following the final refusal of the request to take over, the asylum claim is further proceeded with in the originally responsible local branch office of the BAMF.⁹³ If the solicitation is approved, the Dublin section of the BAMF issues a notification through the responsible Foreigners Authority, as well as an immediately enforceable deportation order to the claimant accordingly. Subsequently, the BAMF coordinates the transfer together with the receiving Member State, the responsible Police and Foreigners Authorities (cf. 4.1.5.1).

In certain cases the jurisdiction of carrying out the Dublin procedure is within the authorities charged with carrying out the police control of cross-border traffic (Federal Police). This applies particularly to foreigners apprehended within the border area and

in close temporal proximity to the illegal entry from a bordering Dublin state. For these so-called border proceedings, advantages of the bilateral readmission agreements should be combined with the requirements of the Dublin procedure. This requires a bilateral agreement with each Member State. A foreigner who has entered illegally shall be handed over to the authorities of the adjacent Member State as soon as possible and without the possibility to travel further into the country. If an appropriate agreement with individual neighbour states to the Federal Republic on conducting the border procedure does not exist, the responsible state is determined by the BAMF.

Interview and Decision

The asylum seeker's personal interview forms the core of the asylum procedure. This interview usually takes place with the assistance of an interpreter and provides an opportunity for the asylum seeker to present sufficient reason to support the claim that he/she is being or will be persecuted. Usually, as soon as possible after the asylum claim has been filed, the hearing of the application is carried out by experienced and specially trained case officers within the BAMF, who are endowed with expert knowledge on the respective country of origin. The interpreter is provided by the BAMF, while legal counsel or a trusted third party may be present at the interview given prior notice. Generally, a person claiming the right of asylum does not have to provide concrete, but rather merely *prima facie* evidence of circumstances that would justify recognition. The Federal Office for Migration and Refugees is responsible for compiling all information relating to an asylum application and decides at first instance. The asylum seeker is, however, obliged to explain the reasons for his/her persecution, state facts in support of this and present any existing official documents.

The asylum case officer within the BAMF then makes a decision regarding the application based on all the relevant knowledge. Relevant in this context means information from the interview, other prompted investigations to elucidate the facts, knowledge from the Asylum and Migration Information Centre in the Federal Office, information and reports from the Federal Foreign Office, from the UN High Commissioner for Refugees and from Amnesty International, reports from scientific institutes as well as news articles and technical literature.

92 The "Dublin" section, which is normally in charge, is located within the BAMF branch in Dortmund; a special steering and control section is located in the BAMF headquarters in Nuremberg and processes cases of fundamental importance as well as e.g. the so-called apprehension cases of illegally resident third-country nationals, who have filed an asylum claim in another Dublin state.

93 Beyond, it is to the discretion of the BAMF to incur and carry out any asylum procedure, despite the regular responsibilities of another Member State on the basis of the Dublin criteria (sovereignty clause to take over even if such examination is not its responsibility under the criteria laid down in the Regulation). This can be, e.g., for humanitarian reasons or if it suggests itself that an asylum procedure is carried out within the national framework of one Member State for political or pragmatic considerations.

The decision on an application for asylum is communicated in written form and contains an explanatory statement. The asylum seeker may consult legal counsel at any point during the proceedings.

Legal Proceedings

If an application is rejected, the asylum seeker may appeal to the administrative court for a review of the decision of the Federal Office for Migration and Refugees. The administrative court's ruling is generally final and marks the end of the asylum procedure. If the court approves the rejection of the application for asylum, the applicant is obliged to leave German territory and in case of non-obedience may be subject to deportation. The admission of an appeal in first instance against the decision of the administrative court can be requested at a higher administrative court, which has to decide upon the appeal's admissibility. This is possible if the case at stake poses substantial or legal questions of general importance, if the ruling of the court of first instance deviates from the rulings of higher courts or if substantial procedural errors are claimed. If the case touches important judicial suspects, the higher administrative courts may in their ruling provide the possibility to launch an appeal in second instance with the Federal Administrative Court. Once legal recourse has been exhausted after the Federal Administrative Court has possibly decided in an appeal of second instance, the parties might seek a decision of the Federal Constitutional Court, the European Court of Justice or the European Court of Human Rights.

Airport Procedure

The airport procedure is a special, accelerated procedure for entry via air, if occurring from a safe country of origin or without proper passport or passport substitute (section 18 a Asylum Procedure Act). In the airport procedure, the asylum proceedings are carried out before the Federal Police decides whether to authorise entry—that is, in the direct transit area—should the foreigner either have no, invalid or forged identity papers, or if their country of origin is deemed safe. Should the Federal Office reject the application as obviously unsubstantiated within two days, the applicant is denied entry. The applicant may then be immediately returned to the country of departure or origin by virtue of the obligations governing the

taking back of asylum seekers. The asylum procedure, including expedited legal proceedings, must be conducted within a standard timeframe of 19 days, otherwise entry must be granted. The possibility of accommodating asylum seekers at the airport is the legal requirement for performing the airport procedure. The procedure can be performed at the Berlin-Schönefeld, Düsseldorf, Frankfurt/Main, Hamburg and Munich airports. Asylum seekers almost exclusively use the Frankfurt/Main airport when entering via air. For this reason, the Federal Office has a field office at the Frankfurt airport and substations at other airports which can decide upon applications for asylum in the immediate vicinity.

Repeat Applications

An application for asylum following withdrawal or final denial of a previous asylum application is designated as a repeat application as defined in section 71(1) Asylum Procedure Act. The Federal Office for Migration and Refugees reviews repeat applications (after an unsuccessful claim for asylum filed at an earlier stage) in two steps. Firstly, the office examines whether the factual or legal situation has changed or whether new evidence is available, providing sufficient grounds for renewing the procedure (section 71 Asylum Procedure Act). In this case, following the procedures outlined above, it determines whether the requirements for being entitled to asylum or being granted refugee status have been met, or whether there are any deportation bans in place.

Subsidiary Protection (Deportation Bans)

In the event that it is not possible to grant asylum, the Federal Office for Migration and Refugees determines whether a deportation ban is in place pursuant to section 60(2), (3), (5), or (7) Residence Act (subsidiary protection). If the Federal Office decides that deportation is impermissible and the exclusions anchored in the Residence Act and Asylum Procedure Act do not apply ("terrorism exemption"; cf. 4.2.3), the involved parties generally receive a residence permit typically restricted to one year and capable of being renewed. However, these persons have fewer rights than recognised refugees, such as in regard to family reunification (e.g. family members' permission to work must be decided separately).

Directive for Issuing Residence Permits to Foreigners from Certain Countries or to Certain Groups of Foreigners

Beyond the general procedures for the recognition of asylum- or refugee-claims, the highest authorities of the Federal States may issue a directive stating that certain groups of foreigners or foreigners from certain countries shall be issued residence permits for humanitarian reasons, reasons relating to international law or to protect the political interests of the Federal Republic of Germany (section 23(1) Residence Act; cf. Parusel 2010 extensively). The decision on admitting groups of foreigners requires consent from the Federal Ministry of the Interior for reasons of federal uniformity. Accepting groups of foreigners can, however, be made dependent on a third party agreeing to provide the means of subsistence for the parties in question. In order to safeguard special political interests of the Federal Republic of Germany and in consultation with the supreme Länder authorities, the Federal Ministry of the Interior, too, may order foreigners from specific states or certain categories of foreigners defined by other means to be granted approval for admission by the Federal Office for Migration and Refugees (section 23(2) Residence Act).

4.1.2.2 Migration

When it comes to admitting third-country nationals without concrete asylum or refugee concerns, a number of different categories of immigrants as well as respective reception procedures can be discerned:

- Meaningful in quantitative terms is immigration of spouses and children of legally residing third-country nationals (dependants/family reunification);
- special regulations apply for the immigration of Jews from the States of the former Soviet Union;
- as well as for ethnic German late repatriates, who migrate primarily from the successor states of the Soviet Union and – upon recognition and entry – become German nationals;
- Distinguished provisions have also been put forward in the area of economic and labour market oriented migration of third-country nationals. Concerning the admittance of third-country na-

tionals for the purpose of employment, migration is controlled according to the needs of the labour market, with the Foreigners Authorities and the labour administration working closely together. For several groups of labour migrants (particularly skilled workers and/or “High Potentials”), there are legal bases for admission (provisions and procedures are also described in further detail in chapter 4.1.4.2 of this study). However, there is no selection mechanism for strategic, long-term immigration such as a points system.

The administrative and organisational responsibilities for these different immigrant groups are outlined in the following paragraphs.

Family Reunification/Subsequent Immigration

Family reasons for the immigration of foreign nationals to Germany have a constitutional basis: Article 6 of the German Basic Law puts marriage and families under special protection of the state (cf. Kreienbrink/Rühl 2007). Art. 8 ECHR (right to respect for private and family life) is of particular importance in this context. The entry and residence of foreign spouses and children of persons residing in Germany has been regulated by sections 27–35 Residence Act since 1 January 2005. Additionally, the Residence Act and its first amendments fully implemented the provisions contained in the European Council Directive on family reunification.⁹⁴

Family reunification with a foreigner requires the resident to be in possession of a settlement or residence permit (section 29(1) no. 1 Residence Act). It is usually necessary for the families of residents to apply for and obtain a visa for family reunification from the German Diplomatic Mission in the country of origin prior to entry and with the consent of the local Foreigners Authority (Kreienbrink/Rühl 2007: 19).

After entry, the family members in question must apply for residence permits at the local Foreigners Authority prior to the expiration of the abovementioned visa. An amendment in the course of the EU-Directives Implementation Act of 28 August 2007 introduced a general minimum age requirement of 18 years for

⁹⁴ For details on the implementation see Kreienbrink/Rühl 2007.

matrimonial unification (section 30(1) sentence 1 Residence Act; exceptions in sentence 2), and that the spouse located abroad is able to at least basically communicate in the German language. Designed to promote integration and prevent forced marriages, this prerequisite, besides some other exemption clauses, does not apply to foreigners who may, due to their nationality, enter the Federal Republic of Germany for longer periods without a visa requirement (section 30(1) sentence 3 no. 4 Residence Act in conjunction with section 41 Residence Ordinance; e.g. Australia, Japan or the United States). Children entering in family unity can be admitted until the age of legal majority and then get a residence entitlement according to their parents'. In cases of subsequent immigration, children only have a legal claim until the age of 16; children between 16 and 18 years of age can, however, get a residence title if they have sufficient command over the German language and appear able to become integrated into life in Germany.

Only in exceptional cases of hardship – to be determined at the Foreigners Authorities' discretion – can family members beyond the nuclear family reunify in Germany. The Forced Marriage Prevention Act that took effect in mid-2011 updated the requirements on invalidating residence titles after long-term absence from Germany (section 51(4) Residence Act) to better protect the victims of forced marriage.⁹⁵ Prior to the revision of this paragraph, a residence title was generally invalidated after a six-month absence from Germany. This put victims of forced marriage taken out of the country at risk of losing their residence titles. Victims of forced marriage taken out of the country now receive a right of return for up to 10 years after departure from Germany in order to improve the protection of these persons and avoid the potential consequences for their residence status as a result of kidnapping. Furthermore, the implementation of the act added forced marriage to the penal code as its own criminal offence (section 237 German Penal Code); previously it was considered a particularly serious type of coercion. In addition to the amended right of return, the Forced Marriage Prevention Act also extended the period required before obtaining independent right of

residence for subsequently immigrating spouses, since it was feared that this independent right of residence intended to protect victims could provide an incentive for sham marriages. Since July 2011, foreign spouses living in Germany must now wait three years instead of two before obtaining a right of residence independent of the existence of the marriage (section 31(1) Residence Act).

Admission Requirements and Procedures for Jewish Immigrants

While the Federal Office for Migration and Refugees is the main responsible body for administering the admission of Jewish immigrants, it cooperates with the German Diplomatic Missions abroad (cf. 4.1.1.2) and the Jewish organisations in Germany. The Central Council of Jews in Germany⁹⁶, the Central Welfare Office of Jews in Germany⁹⁷, the Union of Progressive Judaism⁹⁸, as well as the Jewish Faith Communities are, besides providing important integration services for helping deal with admission, involved in the according admission procedures.

Following resolutions from the German Interior Ministers' Conference (IMK) enacted on 24 May 2007, certain admission prerequisites apply:

- Conceivable evidence of an independently secured means of subsistence
- Evidence of the possibility of being admitted into a Jewish community
- The Federal Office consults the Central Welfare Office of Jews in Germany and the
- Union of Progressive Judaism on this issue
- Basic German language proficiency (test certificate A1 of the Common European Framework of Reference for Languages)

⁹⁵ Act to Combat Forced Marriage, Improve Protection for Victims of Forced Marriage and Amend Further Residence and Asylum Regulations, (Federal Law Gazette I No. 33 of 30 June 2011, 1266).

⁹⁶ Zentralrat der Juden in Deutschland; www.zentralratdjuden.de/en/topic/2.html

⁹⁷ Zentralwohlfahrtsstelle der Juden in Deutschland e.V.; www.zwst.org

⁹⁸ Union progressiver Juden in Deutschland e.V. (UPJ); www.liberales-juden.de

- evidence of Jewish nationality or descent, based on official civil status certificates issued before 1990
- Jewish confession.

The Federal Office, on the basis of these criteria, attempts to come to a profound integration prognosis for the applicant. Besides, an advisory body on Jewish immigration has been installed for purposes of evaluation, control and further development of the reception procedure. The advisory body's office resides in the Federal Office for Migration and Refugees.

Admission and Distribution of Ethnic German Repatriates

Ethnic Germans as an immigrant group are a special exception, since contrary to the Residence Act, the Federal Expellees Act⁹⁹ is not an instrument to control immigration, but rather to reconcile the effects of war (BMI 2008: 122). Following democratisation and associated liberalisation of cross-border traffic in Eastern Europe in the late 1980s, the number of German emigrants skyrocketed. Thus, a formal admission procedure was introduced by means of the so-called Federal Emigrant Admission Act in 1990.¹⁰⁰ The Act to Resolve Acts on Long-Term Consequences of War of 21 December 1992 fundamentally re-regulated the requirements for admission in the Expellees Act. The admission of "emigrants" was closed and admission to (late) ethnic German repatriates was introduced simultaneously with a long phasing-out of admission of expellees. Persons born after 31 December 1992 no longer qualify as ethnic German repatriates and can only come to Germany as spouses or children of entitled persons.

Since then, immigration on grounds of German expellees law is only possible given a review by the Federal Office of Administration in an admission procedure of whether admission requirements have been met before departing from the country of origin, and immigration is authorised via the issuance of a notice of admission. This notice may be issued retroactively in

cases of special hardship. Ethnic German repatriates applying for admission must at least be able to carry on a simple conversation in German at the time of the administrative authority's decision on the admission application. Since 1997, comprehensive hearings with ethnic German repatriate applicants have been conducted in the resettlement area to assess language requirements for admission. Spouses as well as children over 14 must also be able to display German language proficiency. Additionally, the marriage must be contracted at least three years before the time of application.

Upon entry, ethnic German repatriates and their families applying for immigration are distributed among the Federal States following a legally determined quota, the "Königstein key" (cf. 4.1.1.1). Subsequently, the Federal States may assign them a temporary residence if employment or other income to secure a means of subsistence does not prevail. The process should guarantee both an even and socially acceptable distribution of support costs as well as integration. However, the according Place of Residence Assignment Act¹⁰¹ expired at the end of 2009 (cf. Haug/Sauer 2007), so there are for example no longer any options for official sanctions if ethnic German repatriates do not comply with the residence assignment.

With admission and taking residency in the Federal Republic of Germany, repatriates acquire the legal status of a non-citizen German ("Statusdeutscher"). Accompanying non-German spouses and offspring acquire this status upon admission into the Federal Territory after their person of reference has acquired the above-mentioned status. The certification procedure serves as the final determination of status and is effected with the issuance of an "Ethnic German Repatriate" status certificate. This certificate is binding for all authorities and bodies. The Federal Office of Administration has been responsible for the decision on whether to issue the certificate and officially conducting the procedure since 1 January 2005. Prior to that, the responsible state authorities conducted the procedure. In this procedure, all requirements except for the language assessment test are reviewed one final time.

99 Federal Expellees Act (Bundesvertriebenengesetz), version published on 10 August 2007 (Federal Law Gazette I, 1902), amended by Article 19(1) of the law of 12 December 2007 (Federal Law Gazette I, 2840).

100 Federal Emigrant Admission Act (Aussiedleraufnahmegesetz) of 28 June 1990 (Federal Law Gazette I 1990, 1247).

101 Act on the Assignment of a Temporary Place of Residence for Repatriates (Wohnortzuweisungsgesetz) in the version promulgated on 10 August 2005 (Federal Law Gazette I, 2474).

The Ninth Act to Amend the Federal Refugees Act took effect on 9 December 2011.¹⁰² It creates a hardship clause to prevent separating families. It is now possible on a case-by-case basis to subsequently add spouses or children to the admission notice of an ethnic German repatriate. Previously, spouses and children had to enter at the same time as authorised repatriates.

Highly Qualified Foreigners

Highly qualified foreigners may immigrate to Germany given a concrete offer of employment and if it can be assumed that integration and means of subsistence are guaranteed without public assistance. Highly qualified persons in terms of section 19 Residence Act include in particular scientists who possess specialised knowledge, lecturers or researchers in high positions. Such highly qualified scientists can be issued a settlement permit right from the beginning. The prerequisites are checked by the responsible Foreigners Authorities. However, the government of the Federal State may keep issuance under the provision that the supreme Federal State Authority gives its consent. For other highly qualified persons, a new residence title with a minimum income requirement was created in 2012 as part of implementing the EU Blue Card Directive¹⁰³: the EU Blue Card (section 19a Residence Act). To obtain a Blue Card according to the EU Directive, highly qualified third-country nationals must provide documentation of an employment contract or binding job offer with an income of at least one-and-a-half times the average gross annual income in the relevant EU Member State (Art. 5[3], Directive 2009/50/EC). In professions with a particular need for third-country nationals, the income threshold can be reduced to 1.2 times (Art. 5[5]). In Germany, the commencement of the Act to Implement the European Union's Highly Qualified Directive of 27 April 2012¹⁰⁴ on 1 August 2012 allows foreigners with a German or comparable/recognised degree from a foreign higher education institution to obtain a Blue Card¹⁰⁵ (cf. section 19a(1)

Residence Act - new), if they have received a job offer and want to pursue employment in Germany that is suited to their qualifications and provides a gross income that is at least two-thirds of the annual contribution assessment limit in general pension insurance (currently 44,800 €).¹⁰⁶ For certain professions with particular labour demand (natural scientists, mathematicians, engineers, physicians and IT specialists, cf. section 41a(2) Employment Ordinance - new), the required minimum income is approx. half (52%) of the above mentioned assessment limit (currently approx. 35,000 €).

The Blue Card is issued for a maximum of four years at first, whereby the transition to permanent residence is possible after just under 33 months, and after just under 21 months with good knowledge of German (see 4.1.3.2).

In order to prevent the effect of brain drain, legislators have created the possibility of issuing a decree allowing the Federal Ministry of Labour to determine professions for which nationals from certain countries are prohibited from being issued a Blue Card in section 19a(2) No. 2 Residence Act - new. This includes determining a lack of qualified employees in the country of origin in the listed occupational categories.

Education, Science, Research and Development

The implementation of the so-called EU-Researcher Directive has brought about the introduction of a new system for licensing research institutions aiming at employing foreign researchers (section 20 Residence Act in conjunction with section 38 a-f Residence Ordinance; cf. also 4.1.4.2). The according residence permit entitles the holder to pursue an economic activity pertaining to the research project specified in an admission agreement, which has to be signed by both the research institution and the researcher, and to pursue teaching activities. Thus, the consent of the Federal Employment Agency for granting a residence permit pursuant to section 20 Residence Act is not required.

¹⁰² Federal Law Gazette I 2011 No. 62, 2426.

¹⁰³ See fn. 15

¹⁰⁴ See Bundestag printings 236/12 and 17/8682

¹⁰⁵ The BMAS can by decree also determine professions for which qualification comparable to a university degree can be demonstrated with at least five years of professional experience (cf. section 19a[2]1[2] Residence Act - new). This power has yet to be used. The EU Blue Card can thus currently only be obtained with a university degree.

¹⁰⁶ The minimum income is determined by the BMAS as per section 19a[2]1 Residence Act - new. The BMAS has used their power to issue statutory instruments in the form of section 41a[1] Employment Regulation - new.

According to section 16 Residence Act, a foreigner may obtain a residence permit in order to pursue a course of study. This decision shall be made by the Foreigners Authority responsible for the applicant. After termination of the study program, the residence permit may be prolonged by up to 18 months in order for the graduate to seek a job commensurate to the according qualifications (cf. 4.1.6.2).

Self-Employed

Entrepreneurs wanting to start a business can acquire a residence permit under certain circumstances (see details in chapter 4.1.4.2). The procedure is conducted by the Foreigners Authority responsible for the applicant, generally without the involvement of the Federal Employment Agency. However, during review, “the competent bodies for the planned business location, the competent trade and industry authorities, the representative bodies for public-sector professional groups and the competent bodies regulating admission to the profession shall be involved in examining the application” (section 21 Residence Act).

4.1.3 Legal Residence and Changes of Status

4.1.3.1 Asylum and Refugees

Recognition of Entitlement to Asylum or Determination of Refugee Status

Persons with right to asylum recognised as being persecuted obtain a residence permit and enjoy many of the same rights as German citizens. Persons being politically persecuted who obtain refugee status pursuant to the Geneva Convention on the Status of Refugees or who receive subsidiary protection are also entitled to a residence permit. Should the applicant be recognised as entitled to asylum or as a refugee within the meaning of the Geneva Convention on the Status of Refugees, he/she first obtains a three year residence permit that simultaneously functions as a work permit. After three years this permit can be consolidated into a settlement permit, given the requirements continue to be met (sections 25, 26 Residence Act). In cases in which a deportation ban prevails, issuance of a residence permit may be indicated, too, as specified in the law (“subsidiary protection”; see below).

Revocation and Withdrawal Procedure

The Federal Office for Migration and Refugees is required after three years to check for sufficient grounds for revocation of recognition as asylum seeker or refugee and to communicate the results to the responsible Foreigners Authority. If recognition is not revoked or withdrawn, and if three years have passed since the residence permit was issued, the person entitled to asylum or recognised refugee is entitled to an indefinite settlement permit (section 26(3) Residence Act in conjunction with section 73(2a) Asylum Procedure Act). If the requirements for recognition no longer prevail, recognition generally must be revoked, thus nullifying the right to stay in Germany on grounds of asylum law. However, not necessarily does the revocation of recognition lead to the revocation of the right to residency, since in many instances there are already separate grounds for a right to stay. The recognition shall be withdrawn, if in the course of the review, it becomes apparent that it was granted on the basis of incorrect information or withholding of essential facts.

Subsidiary Protection

In the event of a denial of an asylum application or without being granted refugee status, the Federal Office for Migration and Refugees determines if a deportation ban as per section 60(2), (3), (5) or (7) Residence Act is in place (subsidiary protection). When an asylum procedure is being conducted, the Federal Office for Migration and Refugees is also responsible for checking subsidiary protection. If no asylum procedure is being conducted, the Foreigners Authorities must check whether there are grounds for a deportation ban; the responsible Foreigners Authority must then involve the Federal Office (section 72(2) Residence Act). Concerning deportation bans, one needs to differentiate between the granting of protection based on European law, and the granting of protection on a national basis.¹⁰⁷ If prerequisites for granting protection in line with the Qualification Directive are met, the

¹⁰⁷ The granting of protection on European grounds includes those regulations which implement Article 15 Qualification Directive into German law. Insofar as a deportation ban relating to the country of origin is concerned, this relates to section 60(2), (3) and (7) sentence 2 Residence Act (implementation of Article 15 a-c Qualification Directive). National deportation bans are constituted by section 60(5) and (7) sentence 1 Residence Act and – insofar as the deportation ban relates to a third country – by section 60(2), (3) and (7) sentence 2 Residence Act.

person concerned generally has the right to be granted a residence permit; according to the demands of the directive there is no scope of discretion. In case a national deportation ban applies, however, issuance of a residence permit is only foreseen as a rule. Due to their more extensive legal consequences, deportation bans on the basis of European law (referring to the country of origin) always have to be reviewed prior to national subsidiary protection (referring to a third country).

Further, issuance of a residence permit follows section 25(3) Residence Act. A permit may, however, not be issued if one of the exclusion criteria specified in sentence 2 a to d of this paragraph is met (among them war crimes, crimes against humanity, offence of considerable severity and security threats). Other exclusion criteria mentioned in the law (possible and reasonable departure for subsequent admission to another state, repeated or gross breach of duties to cooperate; cf. section 25(3) sentence 2 alternative 1 and 2 Residence Act) are by contrast applicable in cases of a nationally-based deportation ban only, not on the basis of European law, as the Qualification Directive does not allow for such precluding criteria.

If issuance of a residence permit hereafter is ruled out, the foreigner, on the basis of the deportation ban marking a legal impediment to deportation, will receive an exceptional temporary leave to remain (section 60a(2) and (4) Residence Act).

Temporary Suspension of Deportation and Exceptional Leave to Remain

Persons facing deportation may be granted exceptional leave to remain provided deportation to the country of origin is impossible in fact or in law. However, these persons are not legally residing in Germany; their deportation is suspended usually for a three-month period. However, the so-called consecutive granting of exceptional leave to remain (the German term “Kettenduldung” would translate as “chain toleration”) is a frequent phenomenon, and the involved persons often remain in Germany for years. Thus it was decided by the Standing Conference of the Federal States’ Ministers of the Interior on 17 November 2006 that those residing in Germany for many years as a result of consecutive granting of exceptional leave to remain and being gainfully employed – thereby securing a means of subsistence – shall be issued residence permits. This measure was expanded by a statutory

grandfather clause, which amended the Residence Act. Pursuant to these “regulations governing old cases” (German: “Altfallregelung”; section 104 a and b Residence Act), those granted exceptional leave to remain were able to obtain a temporary residence permit with equal access to the labour market, valid until 31 December 2009, provided the following conditions were met: residence in Germany for at least eight years alone or at least six years in a common household with minor children; demonstration of a fixed minimum standard of willingness to integrate and language competency; and no wilful deception of the Foreigners Authorities.

After 31 December 2009, the “probationary” residence permit could be renewed only if the respective foreigner’s subsistence was primarily ensured by himself/herself.

The regulation, which was extended in 2009 by the IMK, was designed to accommodate the need of somewhat well-integrated migrants with long-term leave to remain to have a permanent prospect in Germany. At the end of 2011, the IMK determined that extending this regulation again was not necessary, citing the general possibility of extending probationary residence permits issued under the grandfather clause (under conditions of a positive integration outlook and demonstrated effort to secure a livelihood through employment).¹⁰⁸

A separate regulation on issuing residence titles to youths with long-term leave to remain was created in 2011. The IMK had agreed upon a similar regulation in November 2010.¹⁰⁹ According to the regulation, youths and adolescents with long-term leave to remain should be granted a separate, ensured residence perspective, provided they meet certain requirements (completion of school and vocational training, in particular) and their social integration in Germany appears guaranteed based on their prior integration achievements. The parents of these youths should also be granted a right of residence if they have made

¹⁰⁸ Cf. Collection of Rulings for Publication of the 193rd Session of the Standing Conference of State Ministers and Senators of the Interior on 8 and 9 December 2011 in Wiesbaden, 28.

¹⁰⁹ Cf. 2010 policy report of the German national contact point for the European Migration Network (EMN), Nuremberg: BAMF, 36.

sufficient efforts at integrating and can predominantly secure the livelihood of the family on their own. A legal regulation was then created by the Forced Marriage Prevention Act, which commenced in July 2011;¹¹⁰ according to section 25a Residence Act, youths and adolescents with long-term leave to remain can now be issued a residence permit when they attend or have completed school and a positive integration outlook can be determined. This requires the youth/adolescent has entered Germany before the age of 15, legally resided (permitted, granted exceptional leave to remain or given residence authorisation) in the Federal Territory for at least six years without interruption, and either successfully attended school for at least six years or obtained a recognised diploma or professional qualification. Successful school attendance consists of regular attendance and graduation to the next grade level. In addition, integration into current living conditions must appear guaranteed based on previous integration achievements. The parents/parent with sole custody of a minor with such a residence permit can also be granted a right of residence if not responsible for an inability to be deported and can completely ensure means of subsistence on his/her/their own.¹¹¹

Hardship Case Regulations

The option of being granted residency in case of hardship is an important new institution within German residence law since the reform in 2005 (cf. analysis in chapter 5). Thus, special bodies have been established on the state level. The “Hardship Commission” derives its legal basis as an institution from the new regulations set forth in section 23a Residence Act. Proponents argue that this allows cases to be considered more on their own merits in administrative practice without being tied down by individual facts related to right of residence (cf. Groß 2006: 43). The supreme state authority may issue a decree in particular cases granting a residence permit to a foreigner who otherwise would be obliged to leave the country immediately, notwithstanding statutory issuance and extension requirements. This requires the Hardship Commission to file a request that the case be

recognised as one of hardship. However, the establishment and composition of the committee and the structure of the procedure fall under the purview of the Federal States and have been regulated by means of ordinances. The hardship case regulations do not justify subjective claims and the committee’s decisions are not contestable in court (ibid.: 44; Kluth et al. 2008: 636). When introduced in 2005, the hardship case regulation was designed as a “sunset clause”, terminating on 31 December 2009; with the coming into force of the Labour Migration Control Act of 2008, however, this limitation was lifted.

4.1.3.2 Migration

Whoever is in possession of a settlement permit or EC residence permit is authorised to reside in Germany for an indefinite period of time without requiring renewal or extension. A residence permit for third-country nationals, however, is usually valid for a limited timeframe only and must be extended. Period of validity and criteria are dependent on the purpose of stay; competent bodies are the local Foreigners Authorities.

Employment

Issuance of a residence title authorising gainful employment shall be issued for the duration of the employment, yet not to exceed three years. As a general rule, authorization expires if the specific employment for which it was issued is terminated (cf. chapter 4.1.4 for further details).

Family Reunification

The validity period of a residence permit issued to the spouse of a foreigner residing within the Federal Territory may not exceed that of the foreigner’s, but is issued for an initial period of at least one year. Subsequently, the residence permit is typically extended every two years until the requirements for the issuance of a settlement permit have been met. Upon the accessory issuance of a settlement permit to the spouse, a permanent, independent (that is, dissociated from family reunification) right of residence comes into being (cf. Kreienbrink/ Rühl 2007: 27).

The validity period of residence permits issued to children, too, may not exceed that of their parents, or

110 Act to Combat Forced Marriage, Improve Protection for Victims of Forced Marriage and Amend Further Residence and Asylum Regulations, (Federal Law Gazette I No. 33 of 30 June 2011, 1266).

111 Cf. Bundestag printing 17/5093 (German) of 16 March 2011, 15–16.

that of the parent possessing the sole right of care and custody, and requires their living-together. If at least one parent is in possession of a settlement permit, the child shall be issued a residence permit valid until the child's 16th birthday. Subsequently, pursuant to section 35 Residence Act, the child must be issued a settlement permit, if it has had a residence permit for five years (ibid.: 26).

Students

Upon entry, foreign students are issued a residence permit for a maximum of two years (section 16(1) Residence Act). This may be extended every two years until the purpose of stay is fulfilled by completing the course of studies or receiving a doctorate and as long as a sufficient means of subsistence can be evidenced and the course of studies is executed in a proper way. A residence permit may be issued for up to 18 months for the purpose of finding and taking up commensurate employment (cf. 4.1.4.2). Additionally, it is possible for graduates who want to start a business to obtain a residence permit for self-employment (see below).

Blue Card Holders

Highly qualified persons in possession of the EU Blue Card (see 4.1.2.2) for at least 33 months and having made social insurance contributions during this time are entitled to a settlement permit. If the Blue Card holder demonstrates knowledge of German (corresponding to Level B1 of the European Framework of Reference), the transition to permanent residence can take place after 21 months (section 19a(6) Residence Act).

Self-Employed

The options for obtaining temporary or permanent residence in Germany have improved for foreign entrepreneurs, provided they fulfil the general requirements (cf. 4.1.4.2). A self-employed foreigner entering pursuant to section 21 Residence Act initially receives a residence permit restricted to a maximum of three years. Afterwards, if his/her planned operation is successful and his/her means of subsistence are secure, a settlement permit may be issued two years prior to when foreign workers in general become eligible. Pursuant to the regulations in section 21(6) Residence Act, self-employment may also be permitted while a residence permit for another purpose is maintained.

As part of an update of the Residence Act to implement the EU Blue Card Directive in summer 2011, holders of a residence permit for other purposes were given the option of changing status to self-employed. Since then, graduates (with a residence permit as per section 16 Residence Act), researchers or scientists (with a residence permit as per sections 18 or 20 Residence Act) can also become self-employed and obtain a corresponding residence title. This requires the intended self-employment be related to the knowledge gained at university or to research or scientific activity (section 21(2a) Residence Act).

4.1.4 Integration

Integration Courses

Some groups of immigrants are entitled to participate in nationally standardised integration courses introduced in 2005. Among those who have the (optional) right to participate in this integration course (section 44 Residence Act: migrant workers, self-employed persons, family members, persons entitled to asylum, refugees according to the Geneva Convention on the Status of Refugees, Jewish immigrants), participation may under certain circumstances become mandatory, particularly in case a third-country national turns out to be unable to basically communicate in German (section 44a(1) Residence Act). Integration courses are supposed to support migrants in integrating into the economic, cultural and social life and are primarily geared toward new immigrants with long-term residence plans. The goal of the integration course is to impart sufficient knowledge of the German language (Level B1 GER). The course generally consists of 600 teaching units of German language instruction and 60 hours of orientation instruction to teach everyday knowledge on topics such as rights and obligations, democracy, Basic Law and the system of government, German history, culture/conventions and everyday customs. Due to the amendment to Ordinance on Integration Courses, the prerequisites for offering online-courses have been created. Furthermore, integration courses have been designed for special target groups: Immigrants with additional advancement needs (e.g. parents, women, youths) may take a course of up to 900 teaching units; for candidates with prior competencies there is a shortened integration course of 430 hours (section 13 Ordinance on Integration Courses). On application, a one-time repetition of 300 hours of language course can be granted. Thus, in individual cases, attendance

of integration courses may amount to a total of 1,245 hours. In cases of no legal entitlement to a residence permit, an extension of the residence permit shall be denied, given repeated and gross infringement of participation obligations. If there is a legal claim for extension of a residence permit, this can result in the extension request being denied, unless the foreigner provides other proof of successful social integration. The Foreigners Authority, upon issuing the residence title, shall ascertain whether the foreigner is obliged to attend an integration course. Furthermore, the Foreigners Authority may urge the migrant to meet his or her attendance obligation by administrative or regulatory measures. Possible sanctions include the imposition of a fine up to 1,000 Euros (section 98(2) no. 4 Residence Act) and – if applicable and pursuant to section 31 Social Code II – curtailment of social welfare benefits in case of continued infringement of a participation obligation. For the latter, responsibility lies with the institution providing basic welfare for job seekers (commonly local job centers), who shall cooperate with Foreigners Authorities on this matter.

4.1.5 Obtaining German Citizenship

Immigrants who have legally resided in Germany for a long time may have a legal claim to become German citizens. The naturalisation requirements of the Nationality Act apply. This law was last amended significantly with the enactment of the EU-Directives Implementation Act in 2007.

Major reforms occurred over the last ten years: In 1999, the reformation of the Nationality Act repealed the naturalisation process for ethnic German repatriates. Since then, ethnic German repatriates as well as spouses and offspring included in the notice of admission automatically obtain German citizenship upon issuance of the certificate (cf. 4.1.2.2).

Naturalisation and Duty to Opt

As of 1 January 2000, the regulations on obtaining citizenship according to the *ius soli* principle were introduced, conferring German citizenship to children born in Germany whose parents are foreigners so long as at least one parent has been lawfully and consistently residing in Germany for eight years and has a permanent right of residence. If the child simultaneously obtains another citizenship at birth, he/she may

give up their German citizenship. The acquisition of dual citizenship comes with the caveat of a citizenship retention requirement that dictates that these children must choose between the German and other foreign citizenship upon reaching the majority age. A decision must be made by the time the child turns 23 (so-called duty to opt; sections 4, 29 Nationality Act). Due to a transitional rule, children born between 1990 and 1999 can also claim *ius soli* upon request of the parents (section 40 Nationality Act). These children must also select one nationality; the first of these procedures have been conducted by the nationality authorities since 2008.

As a general rule, third-country nationals born abroad may obtain German citizenship through naturalisation. The responsible bodies for conducting the naturalisation process for foreigners residing in Germany are the naturalisation authorities of the Länder. The following conditions apply for a legal claim to be naturalised (section 10 Nationality Act):

- Unlimited settlement permit or temporary residence permit and legal ordinary residence in Germany for at least eight years;¹¹²
- ability to ensure his or her own subsistence and the subsistence of his or her dependents;
- no sentences for unlawful acts;
- acknowledgement of the free democratic constitutional system of the German Basic Law;
- renunciation or loss of the current citizenship (with several legal exemptions applying);
- sufficient German language proficiency (successful completion of an integration course simultaneously evidences the requisite B1 language proficiency, which reduces the minimum residency period from eight years to seven; the minimum residency period of eight years can be reduced to six years given special integration achievements, particu-

¹¹² In case of extraordinary integration achievements the minimum duration of residence may – by discretion of the authorities – be shortened to six years, e.g. when the foreigner has exceptional command over the German language or if he/she has been involved in voluntary charitable work for significant time.

larly proof of a language proficiency above that of the B1 level or also longer-term volunteer work);

- knowledge of the German legal system, social order and of German living conditions as usually evidenced with a newly introduced naturalisation test (as of 1 September 2008). Applicants with a German school diploma are exempt from this requirement.

Naturalisation courses shall also be offered for preparatory purposes within the Länder's responsibility. However, the Länder may delegate implementation to local non-governmental or semi-public service providers. Competences to develop the curriculum and the standards for examination lie with the Federal Ministry of the Interior (section 10(7) Nationality Act), which has assigned this responsibility to the Federal Office for Migration and Refugees.

The "extremist clause" excludes extremist foreigners from becoming naturalised. To this end, naturalisation authorities generally enquire the domestic intelligence agencies before naturalisation, whether any activities of the foreigner directed against the constitution are known of, which could preclude a naturalisation procedure.

Between 2000 and 2010, a total of 1,434,216 foreigners have made use of their right to naturalisation. In 2010, a total of 101,570 foreigners were naturalised, which marks a growth of 45.7% compared to the previous year. The largest group of naturalised foreigners in 2010, as in previous years, were from Turkey (26%).

4.1.6 Access to the Labour Market

The Immigration Act of 2005 revised the regulations on access to the job market for foreigners, rearranging the overlapping competences of the Foreigners Authorities and the employment administration. General conditions for foreigners to take up employment in Germany are now regulated by the Residence Act. While taking up employment usually requires a residence permit, it is also possible that a national visa by law or by special permission authorises employment. A separate part within the Residence Act (Part 8, sections 39-42) and two ordinances (Employment Ordinance and Employment Procedure Ordinance; cf. 2.2.3)

govern the very procedures of assent for employment in the various sectors of the labour market. The regulations are designed to replace the dual authorisation procedure stipulated by the 1990 Aliens Act with one concentrated procedure ("One-Stop Government"). The dual authorisation procedure required separate authorisations for right of residence (residence permit by the Foreigners Authority) and access to the job market (employment permit by the Employment Agency).

"One-Stop Government"

The local Foreigners Authority is responsible for issuing residence titles and is the primary location for questions regarding residency and taking up employment. If labour migration is intended, an application for the required visa must be filed prior to entry at the German Diplomatic Mission responsible for the country of origin. The Diplomatic Mission refers to the responsible Foreigners Authority for the decision regarding entry authorisation, which then engages the Employment Agency, when applicable (assent procedure; cf. Breidenbach 2010).

Third-country nationals possessing an unlimited settlement permit are authorised by law to assume any employment and do not require separate explicit consent by the Foreigners Authority. Thus, the assent procedure by the Federal Employment Agency is omitted.

Assent Procedure

For applications for residence titles authorising employment (visa or residence permit), the Foreigners Authority reviews whether the desired employment requires assent or not. If the desired employment requires assent, the local Employment Agency branch is called upon in order to review the assent requirements, pursuant to section 39 Residence Act.

Several general conditions must be met in order to obtain consent from the Federal Employment Agency. It must either be proven that assuming such employment would not negatively impact the job market and that there are no German or co-equal labourers (e.g., EU-citizens or citizens of a Member State of the European Economic Area) available, or it must be generally established in individual occupational groups or economic sectors that filling positions with foreign

applicants is justifiable with regards to the job market and integration policies (section 39(2) Residence Act). Furthermore, it must be assured that the foreigner will not be subjected to working conditions worse than those of comparable German employees.

If these general conditions have been met, then the individual purposes of employment as outlined in the Employment Ordinance are to be reviewed (Groß 2006: 36). To this end, employers must provide the local Employment Agency with a detailed job description. The branch then must review whether there are any preferential applicants available in the regional/national job market; only if such placement is demonstrably impossible, the Employment Agency may inform the Foreigners Authority of its assent to the foreigner assuming the position (so-called procedure for establishing priorities).

However, a decision by the Federal Government on 22 June 2011 to create an overall concept to secure skilled labour allows foreign physicians and mechanical, automotive and electrical engineers to enter Germany for employment purposes without preferential review.¹¹³

Assent applies only to a residence title issued for a specific purpose of residence. The conditions determined in the agency's assent (such as a sunset clause as to the duration of employment, the type of employment, the company, location or distribution of hours) must be included in the residence title (visa or a residence permit) by the Foreigners Authority or the German Diplomatic Mission respectively. Likewise, for foreigners already living in Germany, assent to assuming employment can be withheld according to several criteria. It is generally limited for the duration of employment, with a maximum of three years (section 13(2) Employment Procedure Ordinance).

Notably, decisions pertaining to authorising employment are generally left to the discretion of the Foreigners Authority and/or the Employment Agency, respectively. Provided discretion is exercised correctly by the authorities, foreigners are not entitled to

decisions in their favour, even if the requirements for one of the purposes of employment are formally met (Groß 2006: 37). Disputes relating to work permits refer to the issued residence title and must therefore be settled in the administrative (not the labour) courts. However, the sole responsibility of public administration for labour market access was broken with the implementation of the EU Researchers Directive in 2007 (see below); this officially ties the expertise of public and private research institutes with state decision-making regarding authorisation (cf. Thym 2010: 155-156).

Recognition of Foreign Degrees

A law on determining/recognising professional qualifications obtained abroad took effect on 1 April 2012 (the Recognition Act).¹¹⁴ The act is designed to facilitate the access of persons with foreign professional qualifications to the German labour market, thereby facilitating their integration into society and securing a skilled labour base in Germany. The Recognition Act consists of a new federal law (the Professional Qualification Determination Act) and modifications to existing regulations on recognising professional qualifications in 63 federally regulated occupational laws and ordinances on regulated professions (cf. BMBF 2011). The Qualification Determination Act sets forth uniform criteria for recognising foreign professional qualifications and decouples occupation in many professional areas from the previous requirement of German citizenship. It applies to approx. 500 occupations, for which the degree is nationally regulated in a uniform manner. These include physicians, nurses, master craftsmen and all degrees in the 350 German education occupations in the dual system. The federal states will also adapt the occupations in their area of responsibility (teachers, educators, social education workers, engineers) accordingly. An application to determine/verify a professional qualification can be submitted from abroad.

¹¹³ http://www.arbeitsagentur.de/nn_27044/zentraler-Content/Presseanmeldungen/2011/Presse-11-033.html (German)

¹¹⁴ Act to Improve the Determination and Recognition of Professional Qualifications Obtained Abroad, (Federal Law Gazette I 2011, 2515).

4.1.6.1 Asylum and Refugees

The regulations on access to the labour market for refugees have undergone multiple changes over the last decades. In the 1970s and 1980s, it was possible for asylum applicants and refugees to work in specific sectors only, after a waiting period of one or two years. This was to prevent incentives to migrate to Germany for economic reasons. The waiting period was dramatically shortened in 1991. In 1997, an unlimited employment ban was imposed on all newly arriving refugees in order to combat unemployment of the domestic population. However, this step proved largely ineffective and was revoked in the year 2000. Since then, there have been several efforts to improve employment opportunities for asylum seekers, refugees and those with a temporary leave to remain. Regulations are as follows:

- Refugees authorised to reside in Germany while their asylum application is processed may not work during the first year. Afterwards, they may apply for a “subordinate” work permit at the Foreigners Authority. This work permit is only applicable for a certain occupation within a certain company, and the Federal Employment Agency may check for preferential applicants under certain circumstances. The subordinate work permit is limited and can be extended by the Foreigners Authority upon expiration (section 61 Asylum Procedure Act).
- Recognised refugees (persons entitled to asylum and refugees according to the UN Convention on the Status of Refugees) obtain an unrestricted and indefinite work permit (section 25(1) and (2) Residence Act). Self-employment is also authorised under these circumstances, and the permit is listed as such on the residence title by the Foreigners Authority.
- For refugees under subsidiary protection as well as for those that are granted residence permit for other humanitarian reasons general restrictions to obtaining a work permit apply during the first three years of residence. When obtainable, only a “subordinate” work permit shall be issued for these persons. An unrestricted work permit for employment is only available afterwards.
- Job market access for refugees with exceptional leave to remain (section 60a Residence Act) is governed by the Employment Procedure Ordinance. Recent amendments as part of the 2007 Act to Implementation Asylum- and Migration-related EU-Directives resulted in improved job market access for those residing in Germany for years as a result of consecutive granting of an exceptional leave to remain (“toleration”). Employment may be assumed with consent from the employment administration if the foreigner has been residing in the Federal Territory for one year with authorisation or toleration. The Federal Employment Agency may give its consent without evaluating the job market if the foreigner has been living continuously in Germany for four years with toleration or authorisation to reside (section 10 Employment Procedure Ordinance). Excluded from this option are those that have entered the country seeking social welfare pursuant to the Asylum Seekers’ Benefits Act, or whose termination of residence cannot be executed for reasons caused by themselves (section 11 Employment Procedure Ordinance). Recent amendments, effective 1 January 2009 on the basis of the so-called Labour Migration Control Act, encompassed further improvements by introduction of a residence permit for qualified foreigners with exceptional leave to remain (section 18a Residence Act). On this legal basis, “tolerated” foreigners who have completed an apprenticeship or a course of study at a University may receive consent by the Federal Employment Agency for the issuance of such a residence permit without a foregoing procedure for establishing priorities. Similarly, the regulation applies to foreigners, who have pursued employment on the basis of a recognised University degree for at least two years or as a skilled worker for at least three years. Besides vocational qualifications, foreigners in question will have to give proof of integration achievements such as sufficient German language competences or generally being without prior (criminal) convictions. After two years of employment in a job commensurate to his/her qualifications, the residence permit allows unlimited labour market access (section 18a(2) sentence 3 Residence Act).

4.1.6.2 Migration

Third-country nationals entering the country expressly to seek employment require a permit in the visa process. A residence title for gainful employment can be issued, if necessary with approval of the Federal Employment Agency (section 18(2) in conjunction with section 39 Residence Act). Concrete conditions of migration to seek employment are determined by executive order (regulations and ordinances) and not by the legislature (cf. 2.1, 2.2.3). Preferential labour market access is, however, granted to third-country nationals with a residence title, who have been legally employed in a job with mandatory social security insurance for at least two years.

Beyond the fundamental recruitment ban for unqualified, semi-qualified and even normally qualified migrants from third countries, several exceptions for skilled workers, occupational groups and distinct sectors of employment are specified by statutory instrument. According to the Employment Ordinance, which is the “central portal to the German labour market” and “the actual centrepiece of German economic migration regulation” (Thym 2010: 144), these types of employment that require consent of the Federal Employment Agency must be differentiated because certain aspects of job market policy must be considered, and types of employment which may be authorised exclusively by the Foreigners Authorities. Certain temporary purposes of residence such as internships, seasonal work, participation in an international sporting event, being recruited for certain positions that require highly-qualified personnel, assuming a technical position or teaching are all free from requiring assent (sections 3-15 Employment Ordinance). For other occupations (some of which require professional training) the Federal Employment Agency’s approval is obligatory (e.g., seasonal work in agriculture, employment as au pair, chefs in gastronomy, social work, care, but also IT-specialists; cf. sections 18-31 Employment Ordinance). With the Act to Implement the European Union’s Highly Qualified Directive, a six-month residence title was created for foreigners with certain minimum qualifications in order to seek employment (see below).

In addition, the employment authorisation procedure (“One-Stop Government”, see above under 4.1.6) was expedited to help employers fill vacant positions with

foreign employees. Now authorisation for a foreigner to work is considered issued when the Federal Employment Agency does not respond to the query by the Foreigners Authority on permission to work within two weeks, or reports that the documents sent are insufficient to make a determination/the employer did not send the required information in time to make a proper decision (section 14a(1) Employment Procedure Regulation).

Complementing the general provisions for the access of third-country nationals to the German labour market and the associated procedures as set forth in the beginning of chapter 4.1.4, distinct categories of (labour) migration, as they are grounded in the law, shall be specified below.

Family Members

A residence permit issued for family members of a third-country national authorises employment only as long as the foreigner originally residing in Germany is generally also authorised to assume employment. Likewise, it is issued if the persons in question have been living in lawful matrimonial community within the Federal Territory for a period of no less than two years and if extension of his or her residence is not excluded beforehand by law or by an ordinance (sections 29(5) Residence Act). Thus, family members reunifying with a foreigner residing in Germany are generally rendered co-equal to the said foreigner in regards to accessing the labour market, and no extra waiting periods apply. Pursuant to an amendment of the Employment Procedure Ordinance, dependants of skilled workers, highly qualified persons, executives, scientists and researchers as well as managers and specialists can receive consent to take up employment without authorisation from the Federal Employment Agency or preferential review as of 1 August 2012 (section 8 Employment Procedure Ordinance).

Bilateral Agreements and Seasonal Workers

After the fall of the “iron curtain”, bilateral agreements were reached with most Central and Eastern European nations that regulated job market access for workers from partner states. Within a tri-phased transitional period that lasted until May 2011 for all countries except Romania and Bulgaria, these agreements remain an important tool to control labour migration of low-

skilled foreigners in certain sectors of the labour market (for further details see BAMF 2008: pp. 68). Since 1 May 2011, foreigners from those Member States which entered the EU in 2004 enjoy complete access to the labour market. For Romania and Bulgaria (joined EU in 2007), this access is not yet available, since the Federal Government has made use of the third phase of the influx restrictions that can be maintained until 31 December 2013. Simultaneously to extending transition times, the options for workers from the new Member States to access the labour market were expanded by national law to 1 January 2009, especially for graduates by waiving the procedure of preferential review (cf. Parusel/Schneider 2010: 25-26).

- **Agreements on Contract Workers** (“Werkvertragsarbeitnehmer-Vereinbarungen”; section 39 Employment Ordinance) allow companies in partner states to send their employees to Germany for a limited duration in order to establish a pre-defined trade on behalf of a German general contractor. Corresponding bilateral agreements are in place with Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Slovakia, Serbia, Latvia, Macedonia, Poland, Romania, Slovenia, Hungary and Turkey, whereby the agreement with the states that entered the EU on 1 May 2004 no longer apply due to total access to the labour market from 1 May 2011 on. The number of employees that may be sent within the framework of this agreement is apportioned and adjusted yearly to the job market developments. The quota for the period between October 2009 and September 2010 was set at 46,740 workers; however merely 40% of the quota has been met (cf. BAMF 2012).

- **Bilateral Agreements on Foreign Workers** (“Gastarbeitnehmer-Vereinbarungen”; section 40 Employment Ordinance) have been made with 13 Central and Eastern European states. These agreements stipulate that workers from partner states may be employed in Germany (and vice versa) for up to 18 months in order to promote their professional and language skills. The number of workers allowed under these agreements is also apportioned – to about 11,000 workers – though the maximum quota has not been fully exploited and has since 2005 in particular decreased sharply. In 2010, only 607 worker referrals to Germany took place as part of these agreements (cf. BAMF 2012).

- The authorisation of foreign seasonal workers, most of whom come for harvesting in agriculture, is restricted to those nations whose labour administrations have made special arrangements with the Federal Employment Agency in regard to placement. Each seasonal worker may be employed for up to six months per calendar year as of 1 January 2009 (previous four months); a given company may only employ foreign seasonal workers for up to eight months per calendar year (section 18 Employment Ordinance). The number of employed seasonal workers steadily increased between 1995 and 2004. From 2006 to 2010, around 300,000 seasonal workers were employed in Germany temporarily. Most seasonal workers come from the EU states of Poland and Romania.

The total number of third-country nationals coming to Germany on the basis of bilateral agreements or seasonal work therefore is relatively low. It ranged at slightly above 12,000 in the year 2010; sending countries were Turkey, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, and Macedonia.

Students, University Graduates and Skilled Workers

During their studies in Germany, third-country nationals with a residence permit as per section 16 Residence Act may take up part-time work in a study-related or other position for up to 120 full or 240 half-workdays per year. This option is intended to both contribute to securing a means of subsistence and promote entrepreneurial commitment in the fields of science and research in particular, also in regard to employment in Germany after graduation.

A residence permit may be extended for up to one-and-a-half years for students who have successfully completed a course of study at a German university in order to seek employment appropriate to their degree. During this time, graduates may seek employment through the labour administration without having to wait for preferential applicants to be found. With the Act to Implement the European Union’s Highly Qualified Directive, a similar regulation was introduced in 2012 for those who complete a vocational course: after successful completion of the qualified vocational course, the residence permit can be extended for up to a year in order to seek employment suited to this qualification. The residence permit entitles the holder

to employment during this period (sections 16(5b) and 17(3) Residence Act).

Additionally, Germany has gradually widened employment possibilities for foreigners who have graduated abroad. Since 16 October 2007, following the so-called Foreign Graduates Ordinance, mechanical, electrical and vehicle engineers with a degree from a university or polytechnic college can get equal access to the labour market.¹¹⁵ This regulation was extended and since 1 January 2009 included skilled graduates of tertiary education from all disciplines, who have been awarded their degree abroad. Furthermore, in the IT- and communications-sector, even skilled foreigners without a university or polytechnic college degree can be employed, provided their qualification compares to such a tertiary degree. In all these cases, following the amended Employment Ordinance, the Employment Agency is limited to checking the proper working conditions and salary only; it is not performing a full labour market test in order to determine preferential applicants available.¹¹⁶

Another new development is the option for specialists to enter Germany in order to seek employment, which was created by the implementation of the EU Blue Card Directive. Third-country nationals with a university degree who can independently secure their means of subsistence may enter Germany for a period of six months even without a set employment opportunity in order to find work. This new regulation (section 18c Residence Act) was created under the assumption that it can be difficult for foreign skilled labourers to identify potential employers, make appropriate contacts and interview for positions/sign an employment contact from abroad. Conversely, some potential employers consider it difficult to adequately assess the qualifications and suitability of applicants “from afar”.

Furthermore, the requirements for issuing residence titles to business founders were reduced (see below, as well as 4.1.3.2).

Highly Qualified Foreigners

Highly qualified foreigners with a job offer meeting the necessary prerequisites (cf. 4.1.2.2) can gain access to the labour market without the internal approval procedure involving the Federal Employment Agency (sections 19(2) and 42 Residence Act in conj. w. section 3 Employment Ordinance). In these cases, the immediate granting of a settlement permit, which generally allows pursuing any economic activity, is left to the discretion of the Foreigners Authorities.

Researchers

A foreign researcher is granted a residence permit or visa from the Foreigners Authority or the Diplomatic Mission if a hosting agreement is operative between him/her and a recognised research institute in order to carry out a specified research project. Before hosting a researcher, the research institute needs to be certified by the Federal Office for Migration and Refugees. The Federal Office is supported by an advisory council (section 38d Residence Act).¹¹⁷ For each researcher to be employed, a special hosting agreement between the research institute and the researcher needs to be signed. The regulations on the issuance of a residence permit for researchers (section 20 Residence Act) and the procedures for recognising research institutions (sections 38a-f Residence Ordinance) transpose the so-called EU-Researcher Directive into national law.¹¹⁸

¹¹⁵ Cf. Grounds for section 18c Residence Act, Ruling Recommendation and Report by the Internal Committee on Drafting an Act to Implement the Highly Qualified Directive of the European Union, Bundestag printing 17/9436 of 25 April 2012.

¹¹⁶ Cf. Ordinance on the Access of Foreign University Graduates to the Labour Market (Hochschulabsolventen-Zugangsverordnung) of 9 October 2007 (Federal Law Gazette I, 2337). Effective 1 January 2009, the Foreign Graduates Ordinance ceased to exist and was absorbed into the Employment Ordinance and the Employment Procedure Ordinance, respectively.

¹¹⁷ For further details of the advisory council and the regulation as such cf. Kluth (2008) and the brochure disseminated by the Federal Office for Migration and Refugees “Admission of Third-country nationals to Germany for the purposes of scientific research. Information on entry and residence requirements for researchers from Non-EU-Countries”, September 2007, Nuremberg (http://www.bamf.de/nn_432758/SharedDocs/Anlagen/DE/Migration/Publikationen/Flyer/flyer-forschungsaufenthalte-engl.html).

¹¹⁸ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

Self-Employment

A third-country national may be granted a residence permit for the purpose of self-employment if an economic interest or a regional need applies, and if the activity is expected to have positive effects on the economy. At the same time sufficient personal capital on the part of the foreigner or a respective loan undertaking must be available (section 21(1) Residence Act). At the initial coming into force of the Immigration Act in 2005, the standard requirement for issuance was at least one million euro invested by the self-employed foreigner and at least ten jobs to be created. These prerequisites were at first lowered in two steps; since the commencement of the Act to Implement the Highly Qualified Directive of the European Union on 1 August 2012 (see above), the issuing of a residence permit for self-employment is no longer explicitly tied to specific investment amounts or the creation of jobs; the corresponding standard requirement for issuing such a residence permit in section 21(1) Residence Act was removed. Since then, graduates, researchers or scientists could also become self-employed and obtain an appropriate residence title (see 4.1.3.2).

4.1.7 Termination of Residence and Return Measures

Regulations governing the termination of stay have been inserted as a separate chapter into the Residence Act (chapter 5, sections 50–62).

The prevailing provisions are relevant to both refugees/asylum-seekers and (other) migrants from third countries alike, yet several distinct organisational competences apply. Likewise, regulations on return and readmission and the respective agreements with third countries to facilitate return apply to any person who does not, or no longer, fulfil the conditions of entry and residence. These provisions, as well as other measures and programmes beyond the formal regulations of German foreigners law, are outlined in the following paragraphs.

The EU Return Directive¹¹⁹ was completely implemented into national law under the Second Directive

¹¹⁹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Implementation Act of 26 November 2011 (Act to Implement Residence Directives of the European Union and Adapt National Law to the EU Visa Code).

There are no regulations or administrative procedures for the return of migrants who are living legally with a residence or settlement permit in the Federal Republic. In the early 1980s the Federal Government introduced a law which was supposed to encourage foreign employees to return to their native country or country of origin with their families, introducing so-called return bonuses; however, the programme was not successful and was discontinued after a short period (cf. Herbert 2003: pp. 255; Özcan 2007). Regarding the return of migrants, contemporary debates at the level of the European Union on the implementation of models of circular labour migration have to be taken into account.

4.1.7.1 Legal Bases for the Termination of Residence

A foreigner is generally required to leave the country if he/she is not, or no longer, in possession of a requisite residence title. There are multiple reasons for which the right of stay could terminate, among others, upon expiry of the residence title's period of validity or through revocation (sections 50, 52 Residence Act).¹²⁰ In case the foreigner fails to leave the country on a voluntary basis, he or she can be removed by force. The primary administrative body for determining the conditions, officially notifying the foreigner and eventually organizing the removal are the Foreigners Authorities.

Expulsion

Basically, three ways of expulsion can be differentiated, offering the competent Foreigners Authorities variable margins to execute discretionary powers (cf. Groß 2006: 45).

¹²⁰ A foreigner wishing to enter the Federal Territory unlawfully, as prerequisites for entry are not met, is denied entry at the border (refusal of entry; sections 14, 15 Residence Act). In case an unlawful entry has been successful, the foreigner shall be removed within six months of crossing the border (removal; section 57 Residence Act). The competent operating bodies for these border-related matters of fact are the respective Border Police Authorities, i.e. the Federal Police, the Customs Administration or the police forces of the respective Federal State.

- A foreigner must be expelled if he/she has been sentenced to at least three years of youth custody or prison for intentionally committing a heavy criminal offence with no further possibility of appeal, or if he/she has been sentenced for human smuggling (section 53 Residence Act).
- Additionally, a number of facts which suggest the foreigner constitutes a danger will routinely lead to expulsion, e.g. if he/she has been sentenced to at least two years custody or prison term without further appeal options; produces, imports or sells narcotics; belongs to an organisation which supports terrorism; participates in acts of violence in pursuit of political objectives; or has been in a leading function within an organisation which has been banned for the pursuit of anti-constitutional goals (section 54 Residence Act).
- A foreigner may be expelled if his/her presence is harmful to public safety and order, or to other significant interests of the Federal Republic of Germany. Among other things, an expulsion is generally possible if the foreigner claims social welfare for him-/herself, his/her family members or other household members. The EU-Directives Implementation Act further introduced the possibility of expulsion for certain actions that are especially counterproductive to integration, such as coercing or attempting to coerce another person into entering into marriage (section 55 Residence Act).

Administrative court is available for appealing an expulsion decision.

Deportation

The responsible Foreigners Authorities of the Federal States may carry out deportations only if the duty to leave is “enforceable“, i.e. if the duty to leave cannot be legally contested anymore and if the foreigner cannot be relied upon to leave the country voluntarily. As a general rule, a written deportation warning is issued, in which a departure deadline as well as the target country shall be specified (sections 58, 59 Residence Act). According to the EU Return Directive, the Member States must generally pass a return decision against all third-country nationals illegally residing in their territory (Art. 6[1]) or issue a residence permit. Since there was thus far no legal analogue in German residence law to the return decision, the administra-

tive act establishing obligation to depart in German law shall now constitute the return decision in terms of the directive; if the obligation to depart arises by law, the administrative act of a written deportation warning recommended in the Residence Act shall assume the function of a return decision (cf. Basse et al. 2011: pp. 364 in detail). Legal disputes and appeals are dealt with before the administrative courts.

In exceptional cases, the supreme state authority or the Federal Ministry of the Interior may issue a deportation order without prior notice in order to avert a particular danger to the security of the Federal Republic of Germany, or in order to prevent a terrorist act (section 58a Residence Act). It may be issued if the authorities have reason to believe a potential threat exists. Thus, the deportation order is based on strong suspicion, not on judicially proven guilt (Groß 2006: 47). The deportation order is immediately enforceable and no expulsion or notice of intention to deport is necessary.

Foreigners that are obliged to leave the country can be taken into custody if no milder means to prepare or assure the deportation are available. Custody awaiting deportation generally requires a court order and can be applied particularly in two instances (section 62 Residence Act):

- if a decision on expulsion cannot be reached immediately and deportation would be complicated substantially or frustrated without such detainment (custody to prepare deportation);
- if, e.g., the respective foreigner has already evaded deportation or if there is reasonable suspicion that he/she is intending to evade deportation (custody pending deportation).

The district court is responsible only for reviewing the legitimacy of the warrant filing and not the legitimacy of the entire legal procedure. The judge is required to hear the foreigner in question. Remonstrance against the ruling may be filed (cf. Kreienbrink 2007: 32). Following an amendment of the law in 2007, the responsible state authority may even take a foreigner into temporary custody without a prior court order if there is urgent suspicion that custody pending deportation is needed, a court order cannot be issued in advance and there is reason to believe that the foreigner may evade the authorities; in this case, the foreigner is to

be brought before the judge immediately (section 62(5) Residence Act).

Depending on the specifics of the case, the central Foreigners Authorities of the Federal States, the Federal Office for Migration and Refugees, the Federal Co-Ordination Centre for Repatriation Issues at the Federal Police and law enforcement agencies of the Federal States are involved in carrying out deportations. Internal administration or judicial authorities are involved if custody awaiting deportation is required and usually the Federal Police is involved in escorted repatriations. Both expulsion and deportation automatically preclude re-entry. This ban on entry and residence can be made temporary upon the request of the foreigner (section 11 Residence Act).

Protection from Expulsion and Deportation Ban

Some groups of foreigners enjoy special protection from expulsion. Owners of settlement permits, persons born in Germany or having entered Germany as minors, family members of German citizens in cohabitation, recognised persons entitled to asylum and refugees fall under this category. Expulsion of these persons is only permitted with serious cause, and each case must be reviewed individually (section 56 Residence Act).

Furthermore, even in case a foreigner is obliged to leave the country, a deportation is not always possible. Several deportation bans are included in the Residence Act (section 60). A foreigner may not be deported to a country in which his or her life or liberty is threatened due to his or her race, religion, nationality, membership of a particular social group or political convictions. In addition, protection provided by the Geneva Convention on Refugees may extend to non-state persecution. Threats to life, liberty or freedom from bodily harm solely on account of a person's sex may also constitute persecution due to membership of a certain social group. Further grounds for deportation bans result from threat of torture or inhumane or degrading treatment or punishment, threat of death penalty, application of the Convention for the Protection of Human Rights and Fundamental Freedoms and a substantial concrete danger to the foreigner's life and limb or liberty. The Federal Office for Migration and Refugees (BAMF) is responsible for determining in the course of the asylum procedure whether refugee protection is to be granted, or whether an exclusion

criterion prevails for concerns of security (cf. 4.2.3). However, if no asylum application has been filed, the Foreigners Authority is the competent body for determining deportation bans.

Deportation Delay and Exceptional Temporary Leave to Remain

The Länder Ministers of the Interior may issue a directive delaying the deportation of a certain group of refugees for a limited time period. This "deportation stoppage", combined with an exceptional temporary leave to remain, may be decreed for a maximum time of six months and has to be founded on reasons of international law or on humanitarian grounds, or to safeguard the political interests of the Federal Republic of Germany. Afterwards, it may be decreed in unanimity with the Federal Ministry of the Interior that the affected category or group of foreigners be granted a residence permit (sections 60a(1), 23(1) Residence Act).

In individual cases, foreigners may be exempted from deportation via issuance of exceptional temporary leave to remain if deportation is not possible for factual or legal reasons and a residence permit cannot be issued. It is in the responsibility of the Foreigners Authority to examine the deportation possibilities and to apply the respective notification on the exceptional leave to remain. If the foreigner is unintentionally prevented from departing for an indeterminable amount of time, he/she can/should be issued a residence permit following 18 months of exceptional leave to remain (section 25(5) Residence Act).

4.1.7.2 Return Assistance, Repatriation Policies and Scope of Return

Regarding the return of foreigners who are obliged to leave the Federal Territory, priority is given to voluntary return. Under certain conditions this return is financially facilitated. The vast majority of persons who must leave Germany are third-country nationals who originally had applied for asylum. Either this application for asylum was finally rejected, or the acknowledgement of this title was reversed or revoked (cf. 4.1.3.1). In addition to that, refugees hosted in Germany only for temporary protection (e.g., refugees from the Kosovo), constitute a large part of the total of persons obliged to leave.

In 2011, 7,188 deportations were executed via air and 729 via land – all in all 7,917 forced repatriations.¹²¹ At the end of the 1990s, more than 30,000 persons were deported per year; the number of deportations between 2000 (35,444) and 2010 (7,555) has decreased by about three-quarters. The number of voluntary returns has been clearly declining since 2010; however, at the moment these numbers started increasing again. 6,319 persons left Germany voluntarily in the framework of the officially promoted return programme GARP/REAG (see below) in 2011; at the time of the return of civil war refugees from the former Republic of Yugoslavia, these numbers were many times higher. All EU Directives and EU Council Decisions regarding repatriation are, or have been, transposed into German law; the Return Directive was implemented most recently (see above). Furthermore, the financial possibilities created by the Return Fund as well as the European Refugee Fund are made use of. Thus, programmes for the facilitation of voluntary return as well as special projects for a better coordination of preparatory measures for deportations, for instance at the Federal Co-Ordination Centre for Repatriation Issues at the Federal Police, are supported by these new financial means.

Assisted Voluntary Return

Voluntary returns are conducted through programmes that are coordinated between the Federal Government and the Federal States. The Federal Ministry of the Interior and the Länder Ministries of the Interior take the fundamental decisions regarding policy and content. The Federal Office for Migration and Refugees has been administering budget funds for this purpose since 2003 and cooperates directly with the organisations mandated with the implementation of the programmes. This task was written into the 2004 Immigration Act (section 75 no. 7 Residence Act).

The International Organisation for Migration (IOM) runs the return programmes REAG (Reintegration and Emigration Programme for Asylum-Seekers in Germany) and GARP (Government Assisted Repatriation Programme) on behalf of the Federal Ministry of

the Interior, Federal Office for Migration and Refugees and the appropriate state ministries.¹²² The basic requirement for receiving financial aid is a lack of funds. This typically implies that the costs for repatriation or generally for leaving the country cannot be assumed by the person(s) in question.¹²³ At the same time, certain requirements apply to the types of people eligible.¹²⁴ The main responsibilities of the IOM include the provision of information, the review of the application documents of potential voluntary repatriates, assistance in repatriation formalities, decisions on methods of transport and provision of initial financial aid. Applications for assisted return can be filed with the municipal authorities/state authorities (social department, Foreigners Authority, etc.), charity organisations, social services, central consulting services or the UNHCR (cf. Kreienbrink 2007: 87).

The temporary “URA 2” return project began in the Republic of Kosovo on 1 January 2009. The project is supported by the Federal Government and the Federal States of Baden-Württemberg, Lower Saxony, North

122 The REAG programme bears the costs for voluntary return by airplane, train, bus or car and also grants travel allowance; persons from countries of pivotal importance to migration policy may obtain financial assistance with GARP. Additional initial aid for rehabilitation is issued for the first few months, ranging presently from 300 € to 750 € per adult depending on the country of origin. Children up to 12 years receive half of this amount, and the upper limit for financial aid on families was removed. No start-up aid is given to nationals from Macedonia, Montenegro, Serbia/Bosnia-Herzegovina if they entered Germany after the respective date from which visas are no longer required (19 December 2009 for Macedonia, Montenegro and Serbia; 15 December 2010 for Bosnia-Herzegovina). Target countries are determined yearly under cooperation between the Federal Ministry of the Interior and the Federal States according to current political developments and concentrations. In cooperation with the IOM's missions in Austria and the Netherlands, IOM Germany also runs the “Return Initiative for Irregular Migrants Residing in the Main Cities of the European Union” (RIIM). This project aims to improve the voluntary return offers for irregular migrants particularly through the counselling by native speakers.

123 Persons not eligible for REAG or GARP can still receive aid for voluntary repatriation. The Special Migrants Assistance Programme (SMAP) run by the IOM provides inexpensive one-way plane tickets. However, air travel costs must still be assumed by the repatriates or by a separate sponsor, such as a welfare office or a non-governmental organisation.

124 Eligible parties according to section 1 Asylum Applicant Benefit Act are: recognised refugees, other foreigners whose residence was granted for international, humanitarian or political reasons, victims of forced prostitution or human trafficking.

121 In the same year, 8,659 persons were already turned away at the borders (refusal of entry) or removed within six months from the border areas by air, sea or land (3,378 refusals of entry and 5,281 removals); cf. BT-Drs. (printed paper) 17/8833 of 2 March 2012.

Rhine-Westphalia and – since 2010 – Saxony-Anhalt. It aims at offering returnees start-up assistance when reintegrating and at ensuring sustainable reintegration. In addition, return management was supposed to be further improved as a whole.

As part of the projects to support and implement the mobility partnership between the EU and Georgia, the Federal Republic is involved in the project “Targeted Initiative Georgia – Support Reintegration of Georgia returning migrants and the implementation of the EU-Georgia Readmission agreement”. In addition to implementing the readmission agreement, return and reintegration of 1,800 migrants constitute the focus of the project.

Other aid programmes which also assist other target groups are financed by the Federal Ministry of Economic Cooperation and Development, charity organisation sponsors, the Federal States and individual municipalities. In 2003 the “Information Centre for Voluntary Return” (ZIRF) was established within the Federal Office for Migration and Refugees in order to coordinate and link the voluntary return assistance on the different levels and by the different sponsors. As a centre of coordinated return management ZIRF provides information regarding voluntary return assistance for authorities, voluntary welfare sponsors, churches, other involved institutions as well as individual migrants interested in returning. The latter are targeted by the module “ZIRF-Counselling”, which provides general, but also tailor-made country specific information on the current situation in various countries of origin. Thus, migrants considering their return options have the opportunity to ask ZIRF Counselling individual questions via the Foreigners Authorities or a local counselling service on any issues relevant for their return. On behalf of the Federal Office for Migration and Refugees or the German Federal States (which proportionately cover the ZIRF Counselling budget) these questions are answered by staff members of the IOM on-site. Subsequently, the anonymised data are entered into a publicly accessible ZIRF database.¹²⁵

¹²⁵ <http://zirf.bamf.de>

Forced Repatriation

The statutory regulations governing forced repatriation (expulsion, deportation) have been described in further detail in chapter 4.1.7.1. Within this framework, the Immigration Act introduced the option for Federal States to set up central departure facilities. In particular, persons obliged to leave who await repatriation can be accommodated in these open facilities. On the spot, the foreigner has the possibility to receive counselling and to opt for a voluntary return. In contrast to custody pending deportation, which has to be ordered by a judge (cf. above), the Federal States’ Foreigners Authorities decide in accordance with their competences to restrict the residence of a foreigner obliged to leave in geographic terms or to accommodate the person in a departure facility (section 61 Residence Act).

Prior to repatriation of a foreigner obliged to leave possible deportation bans have to be checked by the appropriate Foreigners Authority (cf. 4.1.7.1). If the person has undergone the procedures for the recognition of asylum- or refugee-claims, the Foreigners Authority checks only the so-called domestic-related impediments to execution. The Federal Office for Migration and Refugees, on the other hand, decides whether a target state-related deportation ban exists. If the person in question has not undergone an asylum procedure, the Foreigners Authority will only make a decision after previous involvement of the Federal Office for Migration and Refugees (section 72(2) Residence Act).

In the case of a court order to arrest a foreigner (see above), the person may be held in precautionary detention (detention pending deportation) for no longer than 18 months and in preparatory custody (custody to prepare deportation) for no longer than six weeks. The Federal States are responsible for taking the foreigner into custody; the municipal or district Foreigners Authority typically oversees the procedure. The foreigner will be held either in a special facility for those in custody awaiting deportation or, if necessary, in a regular prison. These are administrated by the States’ Ministries of Justice or the Ministries of the Interior; however, the conditions of custody differ from regular custody, since the custody pending deportation is a civil custody with preventive security function (cf. Kreienbrink 2007: 32, 147-148).

Implementing repatriation requires valid travel documents, which – if necessary – have to be provided by the Foreigners Authority. The Federal States have centralised the provision of travel documents in lieu of passport at one or several (clearing) offices in each state. A Federal Co-Ordination Centre for Repatriation Issues was created at the Federal Police Directorate in Potsdam in order to deal with the provisioning of passports for especially problematic countries of origin. For the purpose of executing repatriation, the Foreigners Authority transfers the passport or travel documents of the foreigner to the police. The police forces of the Länder are usually involved to provide enforcement assistance and escorts the foreigner to the border/airport, where he is then remanded into the custody of the Federal Police and escorted out of the country. The police escort ends at the airplane or continues until the foreigner is transferred to the responsible authorities in the transit area of the target state. In individual cases officers of the Länder police or security guards of airlines carry out the transfer of the foreigner (cf. Kreienbrink 2007: pp. 153).

Readmission Agreements

The duty of third countries to readmit their own citizens generally results from international law. Additionally, bilateral readmission agreements may regulate the modalities of readmitting a nation's own citizens as well as – under certain conditions – citizens of other countries and stateless persons. Furthermore, these treaties stipulate the resources and procedures for determining citizenship, to issue travel documents back to the country of origin and the details needed to enforce repatriation. In addition, Germany has signed transit and carry-through treaties for both voluntary return and forced repatriation. These agreements ensure that foreign nationals without transit visas may travel or be transferred through partner states without additional requirements.

In the last decades, the Federal Republic has signed more than 30 bilateral readmission agreements.¹²⁶

¹²⁶ A list of all readmission agreements is published on the website of the Federal Ministry of the Interior: <http://www.bmi.bund.de/cae/servlet/contentblob/151414/publicationFile/17366/RueckkehrFluechtlinge.pdf> (German).

Besides that, a whole series of agreements to facilitate the return of third-country nationals obliged to depart have been negotiated on Community level, thus covering all Member States of the European Union. At present, 13 such EU treaties with third countries are in force.

Transfers within the Framework of the Dublin Procedure

A special form of repatriation is governed by the regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application ("Dublin II"; cf. 4.1.2.1). In this case, the Federal Office for Migration and Refugees is in charge of the process. Upon receiving consent from the potentially receiving Member State, the respective "Dublin Unit" within the Federal Office coordinates the supervised transfer on the basis of a deportation order. Similar to the procedures for deportation, the departure is usually supervised. Custody may be decreed until the date of transfer (see above). Logistics, transport and the factual transfer are taken care of by the Foreigners Authorities and the Federal Police. However, within the framework of these shared administrative competences the Federal Office for Migration and Refugees continues to oversee the procedure.

Return Facilitation for Labour Migrants

At the level of local authorities and sponsors, welfare organisations and church institutions, a range of counselling offers exists for potential repatriates legally residing in Germany. However, these are predominantly part of the general advisory services for migrants (cf. 2.7). Among the relatively few programmes and offers at the federal level which focus on the return of labour migrants, the ones with reference to development policy or labour market policy predominate. The Centre for International Migration and Development (CIM)¹²⁷ is a joint venture with the German Association for International Cooperation (GIZ)¹²⁸ and the Central

¹²⁷ Centrum für internationale Migration und Entwicklung; www.cimonline.de

¹²⁸ The German Association for International Cooperation (GIZ) resulted from the merger of German Association for Technical Cooperation (GTZ), the Association for International Advanced Training and Development (InWEnt) and the German Development Service (DED).

Office for Foreign and Specialised Referral¹²⁹ (ZAV) of the Federal Employment Agency. CIM was founded in 1980 and is for the most part financed by the Federal Ministry for Economic Cooperation and Development (BMZ).¹³⁰ Among other services CIM offers the programme “Returning Skilled Professionals”.¹³¹ This programme supports people from developing, emerging and transition countries, who worked or received a training in Germany and would like to return in their native country to contribute their acquired knowledge. The ZAV also provides counselling for migrants on issues regarding their return and occupational reintegration. So-called mobility consulting is a non-binding and open-ended offer of consultation on funding opportunities as well as living and working conditions in the countries of origin.

The above described project “ZIRF-Counselling” with its advisory and information offers is generally geared towards any migrant; thus it may be used by third-country nationals, who arrived in Germany for other reasons than claiming asylum or refuge, and who are either willing or obliged to return.

4.2 Links with other Policy Areas

Asylum and migration policies intersect with several other policy areas, with integration policy displaying the highest degree of overlap. This policy field has developed as a result of past migration movements and meanwhile has given rise to a “National Integration Plan”, drafted at the national level (cf. Beauftragte 2007a, 2008). Important aspects of integration are regulated in the Residence Act and were dealt with in other passages of this study (cf. 2.2, 2.3, 2.1.5, 2.1.6 and 4.1.4). This is why integration policy is not discussed separately in this chapter. The majority of institutionalised links with other executive and administrative areas as well as the key political actors have been covered in chapter 4.1.

Beyond, several policy areas subjected to separate ministerial responsibility are linked with refugee and

migration policy. They are also dealt with in this study, although they are not directly connected with the administrative levels and competences outlined in chapters 4.1.1 to 4.1.5. To give an example: Although climatic changes or natural disasters have increasingly been acknowledged as factors causing migration over the past few years (cf. Conisbee/Simms 2003; Renaud et al. 2007), as of yet there are hardly any institutional links between migration and environmental policy at the national level.

Regulations concerning migration are also relevant in the foreign policy domain with regard to Germany’s international relations. When negotiations on recruitment agreements with the countries of Southern Europe, Africa and Turkey were lead in the 1960s (cf. 3.1), the Federal Foreign Office had strong influence on the German migration policy (cf. Schönwälder 2001). Also in economic, educational and research policies, migration issues play an important role every now and then.

Likewise, at the level of parliamentary policy formation asylum and migration are embedded in several policy areas beyond domestic policy. In the German Bundestag, important bills are discussed by the leading Committee on Internal Affairs as well as by the Committees on Legal Affairs, Labour and Social Affairs, Education, Research and Technology Assessment, Foreign Affairs, Family Affairs, Senior Citizens, Women and Youth as well as Human Rights and Humanitarian Aid.

It becomes obvious that the topical overlaps are quite widespread and thus asylum and migration can be considered political cross section themes. In the following chapters, five central policy areas are covered in more detail. These policy areas display a number of institutional or conceptual overlaps with migration and/or asylum in the sense of this study; furthermore they have recently yielded quite some attention in German academic and policy circles as well as in the media.

4.2.1 Labour Market Policy

The admittance of migrants to the labour market is regarded as a key issue in order to achieve a better integration into society. Nevertheless, there are still significant differences visible in labour market integration of migrants and non-migrants. Labour force participation of people with migration background

129 Zentrale Auslands- und Fachvermittlung; www.ba-auslandsvermittlung.de

130 Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung; www.bmz.de

131 Rückkehrende Fachkräfte

remains clearly behind the participation of people without migration background. In particular, female migrants are characterized by a low labour force participation rate; this has various reasons, particularly different gender roles. Despite the fact that the unemployment rate of foreigners has dropped in recent years, it continues to remain more than twice as high as the German rate. In July 2011, the unemployment rate of foreign nationals ranged at 14.4 %; the one of Germans at 6.3 % (BA 2011).

The institutional overlaps between residence and labour market policies in Germany are not limited to the procedures of job market assessment in the framework of the issuance of residence titles as described in chapter 4.1.4. Even if access to the German labour market is granted, difficulties arising from lacking or insufficient formal qualifications often result in the previously mentioned poor labour force participation rate. This is also the reason why migrants are accounted to work more frequently in job positions below their qualification level than their German counterparts. The Federal Government assumes that about 300,000 migrants live in Germany who are overqualified for their current jobs because their professional qualifications were either not determined or not recognised. More precise data on the educational background of foreigners living in Germany is not available, as data on educational achievements are not systematically compiled on arrival (cf. Beauftragte 2005: 57, 77; Englmann/Müller 2007: 16, 23).

Projects for Labour Market Integration

Besides checking labour market admission criteria for newly entering labour migrants, the Federal Employment Agency – in collaboration with the municipalities – is also responsible for the job referral of, and social benefits provision to the unemployed, including migrants who have been residing in Germany for a longer period of time already. Particularly since the legal framework pertaining to job referral has undergone a major reform in 2005, various problem areas have been identified, which, however, need to be solved primarily on the level of the regional Job Centres (cf. Beauftragte 2007: 75; Schneider et al. 2008).

The nationwide “Integration by Qualification” (IQ) network launched by the Federal Ministry of Labour and Social Affairs in 2005 has developed and tested instruments, recommendations and consultation

and qualification concepts to improve the integration into the labour market of persons with migration background in the five spheres of activity (recognition, business German, diversity management, start-up and qualification) during the last years. These should now be implemented nationwide and added to the standard offers. Since integration into the labour market is primarily successful when the various parties on-site are networked, so far a total of 11 regional networks have been expanded to implement these concepts and recommendations. A total of 25 of these regional networks should be created nationwide by 2014.¹³²

There are also other projects that seek in the broadest sense to improve the structural integration of migrants into the German labour market. For example, the “Diversity Charter” initiative was set up in 2006 by some international corporations with the help of the Federal Government and the Commissioner for Integration. So far more than 1,000 companies and authorities have signed the charter, which contains a basic commitment to fairness and appreciation of people as well as corresponding obligations.¹³³ The AQUA project by the Otto Benecke Foundation¹³⁴ has been offering job-based qualification for graduates from third countries since 2006.

Labour Market and Illicit Work

Another concern of major importance in the area of migration policy and the labour market is the problem of illicit employment of migrant workers.¹³⁵ Hence, it came to several alterations in the legislation aiming at combating illicit work.¹³⁶ With the Second Act to Implement EU-Directives from 2011, among others the Sanctions Directive (Directive 2009/52/EC) has been transposed and a temporary residence permit has

¹³² www.netzwerk-iq.de

¹³³ www.diversity-charter.org

¹³⁴ AQUA – Akademikerinnen und Akademiker qualifizieren sich für den Arbeitsmarkt (Graduates Qualifying for the Labour Market); www.obs-ev.de/aqua

¹³⁵ The economic equivalent of illicit employment (of both Germans and foreigners), according to various, sometimes contested estimates, ranges between 70 and 160 billion Euros (cf. Junkert/Kreienbrink 2008: 17).

¹³⁶ Most important the Act to Combat Illicit Work and Illegal Employment (Schwarzarbeitsbekämpfungsgesetz – SchwarzArbG) of 23 July 2004 (Federal Law Gazette I, 1842), last amended by Article 2 of the law of 21 December 2008 (Federal Law Gazette I, 2933).

been created for irregular migrants who are willing to testify against their former employers. In addition, the employer can be held financially accountable for the possible costs of deportation. Furthermore, the employer became obliged to remunerate the irregular migrant according to their agreement. Additionally, organisational competences were concentrated with the customs services and a special Monitoring Authority for Illegal Employment (FKS)¹³⁷, which carry out regular checks in the field (cf. Junkert/Kreienbrink 2008). Cooperations for cracking down on illicit employment further involve a number of public bodies, such as the fiscal authorities, the Federal Employment Agency, the providers of health and pensions insurances, the providers of accident insurances, the providers of social assistance and the Foreigners Authorities, but also the police and security authorities, e.g. within the framework of the GASiM (cf. 4.1.1.2, 4.2.3).

4.2.2 Development Policy

Migration, from a development perspective, can have both positive and negative effects. (Labour) migrants account for considerable amounts in financial and social transfer to their countries of origin. In fact, many questions related to the effect of these remittances on development in the countries of origin – poverty alleviation, income distribution and economic growth – remain either unanswered or vague and require further exploration (cf. Ambrosius et al. 2008; Hertlein/Vadean 2006: 7).¹³⁸ Thus, remittances have also a high conflict potential. They may widen the socio-economic gap in countries of origin between those benefiting from regular transfers and those not having supportive relatives abroad. Furthermore, local families, regions or even entire national economies such as Mexico and the Philippines can become dependent on remittances, which is why application of and investment in remittances, which is sustainable from the perspective of development policy, cannot generally be assumed. Meanwhile, following the United States, Germany has become the second most important source country for

remittances worldwide, with over 15.9 billion USD in 2009 alone according to statistics from the World Bank (World Bank 2011).

In general, Germany's policy on development and economic cooperation is aligned with international treaties and obligations, such as the United Nations Millennium Declaration and the therein formulated Millennium Development Goals. German development policy is however also increasingly influenced by stimuli from the European level. In addition, since the change of government in 2009 Germany has been striving to focus German development commitment on a few central key sectors (e.g. good governance, education or climate and environmental protection) and to intensify co-operation with the private sector (public private partnerships). Current challenges for German development policy include both the consistency of different policy areas (i.e. environmental policy and migration policy) as well as the overall efficiency of the development policy. Accordingly, German development policy was structurally reformed in 2010 with the intent of making it more efficient and coherent. The consolidation of the three implementing organisations (formerly GTZ, InWent and German Development Service (DED), now Association for International Co-operation (GIZ) GmbH)¹³⁹ was a central step in this process. In addition, an evaluation institute as well as a service office for civic and community commitment will begin work still in 2012.

When it came to migration-related issues in past times, the "brain-drain" argument was at the forefront and rather negative aspects of the migration-development nexus stood out: local push factors such as poverty, insecurity and the lack of perspectives for the young generation in less developed countries lead to the immigration of sometimes qualified persons. This results in a loss of human capital, and the capacity of these sending countries for development and innovation suffers. The dilemma of (highly) qualified people emigrating from the less-developed hemisphere to Germany is sought to be resolved by the introduction of programmes aiming at return/circular migration. In that respect, the Federal Ministry for Economic Coop-

¹³⁷ Finanzkontrolle Schwarzarbeit; www.zoll.de

¹³⁸ In some countries, remittances by migrants is double the public funds for official development aid (ODA) and direct foreign investment. According to statistics by the World Bank, in Tajikistan remittances constituted approx. 35 % of GDP in 2009 (World Bank 2011).

¹³⁹ <http://www.giz.de>

eration and Development (BMZ)¹⁴⁰ has fostered special trainings for would-be returnees and subsidised those willing to go back to their country of origin in order to work in the development field (cf. BMZ 2008: 184). Mobility partnerships/concepts for circular migration were also realised on the federal level based on European initiatives. Most recently, in 2009 a mobility partnership was created with Georgia, in which Germany is also involved (on circular migration cf. Schneider/Parusel 2011).

Similar to several other European countries, a recent trend can be observed in Germany to involve migration organisations and the diaspora (de Haas 2006: 85; Borchers 2008: 479) in order to promote the development potential of migrants. Migrants often work toward the development of their countries of origin and conduct charity and education projects or private sector activities in their countries of origin. Migrants are also media for social remittances. They transfer know-how, value and standards obtained in their host country by visiting their home country or through aid projects and can thus trigger development incentive in their countries of origin.

Actors and Initiatives

Following an initiative by the UK Government's Department for International Development, the BMZ has launched a website on private remittances at the end of 2007.¹⁴¹ It is the project's goal to create online transparency on transaction fees deducted for respective money transfers of migrants and to foster market competition in this area.

The BMZ promotes educational mobility and knowledge exchange through the Germany Alumni Portal.¹⁴² Using this social network, people who studied, researched, worked or have been trained in Germany can keep, expand and use their skills and contacts for their personal and professional development. The World University Service (WUS)¹⁴³, supported by the BMZ, supports students from Africa, Asia and Latin America with its study monitoring programme in

Hessen and prepares for the successful reintegration of these students in their countries of origin.

The GIZ¹⁴⁴ is an important actor in the field of development programmes in Germany. As a federally owned international cooperation enterprise for sustainable development which supports the Federal Government in achieving its development objectives, it recommends several steps in order to progress German migration and development policies. The GTZ aims at activating the development potential of migration in order to create "triple-win-situations", in which sending countries, host countries and the individual migrant (or his/her family, respectively) benefit from managed migration, focusing on the facilitation of remittances, private sector investments among returnees and diaspora communities, migration policy consulting and vocational qualification (cf. GTZ 2008; GIZ 2011). The then-GTZ established a Migration and Development Project in 2003 and developed programmes and strategies on these topics that aimed at technically, organisationally and financially supporting development activities by migrant organisations. In the course of the structural reform of German development policy, migrant organisations in Germany that are active in their countries of origin have been supported by the Centre for International Migration and Development (CIM) since 2011.¹⁴⁵

German development policy also provides advice for countries of origin in the reintegration of returnees and the transfer of knowledge by migrants as part of migration policy consulting (cf. BMZ 2011: 16; GIZ 2011). Migration policy consulting should also make the consulates of the migrants' countries of origin able to support their diaspora in transnational civil and private sector activities.

A number of further organisations in German development policy work on behalf of the BMZ and try to foster the reintegration of migrants from developing countries who gained skills while working in Germany. Among them are the Central Referral Service for Skilled Employment Abroad (run by the Federal Em-

140 Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ); www.bmz.bund.de

141 Cf. www.geldtransfair.de

142 <http://www.alumniportal-deutschland.de>

143 <http://www.wusgermany.de>

144 Gesellschaft für Technische Zusammenarbeit (GTZ); www.gtz.de

145 http://www.cimonline.de/documents/CIM_Web_Flyer_Diaspora.pdf (German)

ployment Agency)¹⁴⁶, which is involved in the “Returning Specialists” programme, and the German Financing and Development Association (DEG)¹⁴⁷, which is a member of the publicly owned “KfW Bankengruppe” and monitors the progress of start-up programmes. The BMZ also sponsors InWent (International Advanced Training and Development),¹⁴⁸ a not-for-profit provider that has been part of the GIZ since 2010, which offers measures for capacity building for qualified workers and executive managers and supports the establishing of networks. The Alexander von Humboldt Foundation facilitates research stays in Germany for highly qualified scientists. Grants for scientists from partner countries of Germany’s development co-operation who are supported in their development research by a stay in Germany is of particular developmental relevance.¹⁴⁹ The German Academic Exchange Service (DAAD)¹⁵⁰ runs comprehensive programmes in colleges and universities in countries of development and transformation, which foster the exchange of scholars and teaching personnel. Beyond these semi-governmental or not-for-profit initiatives, there are several other NGOs active in the field, such as the Development Service run by the Protestant Churches (EED)¹⁵¹, which offers – among other things – a re-integration programme for skilled workers willing to repatriate, or the political foundations.

In light of the intensively held debate on the migration-development nexus on the European and international level (cf. 5), concepts and programmes in the “migration and development” area were developed on the federal, state and municipal levels. The ruling of the minister presidents of the states on development policy in 2008 is dedicated to developmental educational work as well as “migration and development”, and individual states co-operate with developmentally active migrant organisations (e.g. Rhineland-Palat-

inate¹⁵² or Baden-Württemberg¹⁵³). In North Rhine-Westphalia separate competences were defined within the former Ministry for Intergenerational Affairs, Family, Women and Integration; the ministry supported network structures as well as projects of migrant self-organisations in Africa in order to strengthen the diaspora communities (“Capacity Building”).¹⁵⁴ Due to the restricted competencies of municipalities in the area of development policy, the “migration and development” area will be implemented by actors in integration policy first and foremost on the municipal level to strengthen co-operation with migrant organisations. Municipalities also support developmental educational work as offered in many cases by migrant organisations. The BMZ has set up a project at InWent through the national “Municipalities in One World” service office to support the co-operation between municipalities and developmentally active migrant organisations.¹⁵⁵

4.2.3 Home and Security Policy

Since the terrorist attacks of 11 September 2001 in the United States, legislative institutional measures have continuously been taken in Germany as well in order to potential threats posed by international Islamist terrorism and the growing importance of migration aspects in questions of security.

As far as legislation is concerned, the so-called security packages are of central importance. The entailed amendments affected both residence and asylum law as well as other foreigners laws, partly directly, partly indirectly. The Association Act¹⁵⁶ – amended by the “security package I” of November 2001 – can now be applied to fundamental Islamic groups as well. After a supplement of the Criminal Code, membership in or support of terroristic groups can also be prosecuted,

146 Zentrale Auslands- und Fachvermittlung (ZAV); http://www.arbeitsagentur.de/nn_29928/Navigation/Dienststellen/besondere-Dst/ZAV/ZAV-Nav.html

147 <http://www.deginvest.de>

148 InWent (Internationale Weiterbildung und Entwicklung gGmbH); www.service-eine-welt.de

149 <http://www.humboldt-foundation.de/web/start.html>

150 Deutscher Akademischer Austauschdienst (DAAD); <http://www.daad.de/en/index.html>

151 Evangelischer Entwicklungsdienst (EED); www.eed.de

152 http://www.ism.rlp.de/no_cache/internationale-zusammenarbeit/?cid...did...

153 <http://www.baden-wuerttemberg.de/fm7/2028/Leitlinien-EZ210110.pdf> (German)

154 Cf. for instance the data base www.AFRIKA-NRW.net; African associations and clubs are able to present their work and activities to a broader public by this data base.

155 <http://www.service-eine-welt.de/home/index.html>

156 Act to Regulate the Public Association Law (Vereinsgesetz) of 5 August 1964 (Federal Law Gazette I, 593).

if the target persons or groups are not in Germany. The second security package (Anti-Terrorism Act¹⁵⁷) passed in December 2001 changed – among others – the Aliens Act, the Asylum Procedure Act as well as the Act on the Central Aliens Register. Furthermore, it strengthened the competences of the security agencies (police and intelligence services). Further counter-terrorism measures were originally included in a draft “security package III”, which however was not passed in Parliament. In the meantime, most of these measures, among which are the following, has been transposed into law:

- The transfer of preventive authority to the Federal Criminal Police Office in so-called Federal Criminal Police Office Act¹⁵⁸;
- The passing of the Anti-Terrorism Extension Act¹⁵⁹;
- The passing of an act to set up the so-called Anti-Terrorism File¹⁶⁰.

Following the provisions of the so-called Qualification Directive, the preclusion asylum and refugee recognition, or the non-refoulement principle respectively, in cases of serious threats to security was comprehensively introduced into both the Residence and the Asylum Procedure Act. Thus, for instance, crimes against peace or humanity as hazards to the security of the Federal Republic of Germany are explicitly cited in the “terrorism provision”; (cf. particularly section 25(3) sentence 2, section 60(8) Residence section 3(2) Asylum Procedure Act).

157 Act to Combat the International Terrorism (Terrorismusbekämpfungsgesetz) of 9 January 2002 (Fed Law Gazette I, 361), last amended by Article 2 of the Anti-Terrorism-Supplement Act of 5 January (Federal Law Gazette I, 2).

158 Act to Avert Dangers of the International Terrorism by the Federal Criminal Police Office (BKA-Gese 25 December 2008 (Federal Law Gazette I, 3083).

159 Among other things, this act extended the measures of the Anti-Terrorism Act, which had originally restricted to five years but practically proven by evaluation, to ther fur five years.

160 Act to Set up Joint Files of Police Authorities and Intelligence Services of the Federal Government an Länder (Gemeinsame-Dateien-Gesetz) of 22 December 2006 (Federal Law Gazette I, 3409).

Cooperation of the Authorities

In the framework of these legal measures the cooperation between German Diplomatic Missions and the security authorities was intensified, and opportunities for ID verification and information exchange between security and migration authorities expanded.¹⁶¹ The principle of assuming asylum and foreigners law as intrinsic components of security legislation and the law of averting serious hazards is now also expressed through a coordination task introduced to the Residence Act in 2007. This task is to be carried out by the Federal Office for Migration and Refugees as central migration authority: Pursuant to section 75 no. 11 the BAMF coordinates information transfer and analysis of evidence gathered by several security-relevant federal authorities – particularly the Federal Criminal Police Office (BKA) and the Federal Office for the Protection of the Constitution – on “foreigners for whom measures under the law on foreigners, asylum or nationality are to be considered owing a risk to public security”. The setting-up of the Joint Counter-Terrorism Centre (GTAZ) in 2004, the formation of working groups to end or limit the residence of Islamist or extremist foreign endangering persons (since 2004) as well as the setting-up of the Joint Analysis and Strategy Centre for Illegal Migration (GASiM; see below) in 2006 are important institutional measures at the federal and Länder levels.

The GTAZ’s more than 100 specialists from the Federal Government and the Länder value actual endangering clues, coordinate operative measures and supply background analysis. Besides the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution, the Federal Intelligence Service, the States’ Criminal Police Offices and Offices for the Protection of the Constitution, the Federal Police, the Federal Customs Administration, the Military Counter-Intelligence Service, the Attorney General as well as the Federal Office for Migration and Refugees are involved in the GTAZ.

In the working groups on federal and state levels, security and migration authorities cooperate targeted on a case-by-case basis. Particularly in the case of persons

161 Further details about the security-relevant issues which are subject of the authorities’ cooperation are given in chapter 4.1.

with extremist or terrorist background, it shall be acknowledged precociously whether measures concerning the termination of stay or close monitoring, the revocation or withdrawal of asylum- or refugee-claims, the prevention of (re-)entry, the prevention/revocation or withdrawal of naturalisations are to be induced. The Federal State of Bavaria has institutionalised a cooperation of this kind. Here, since the end of 2004, the working group “BIRGiT” (Accelerated Identification and Repatriation of Endangering Persons from the Islamist Terrorist and Extremist Sector)¹⁶² has been dealing mainly with cases from the Islamist sector. Specialists of Foreigners Authorities, the Federal Office for the Protection of the Constitution, the police and other authorities gather all available information on corresponding persons at the round table, in order to facilitate their expulsion or deportation. In the meantime, similar working groups have also been created in other states.

A central measure of authoritative cooperation in national security issues connected with questions related to entry and residence is represented by the GASiM, founded in 2006. GASiM is the permanent information, coordination and cooperation platform of various federal authorities, among these the Federal Police, the Federal Criminal Police Office, the Federal Office for Migration and Refugees, the Federal Customs Administration, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service and the Federal Foreign Office. Through the improved information exchange, the network should be able to holistically represent available data on irregular migration in and through the Federal Republic. This provides an early warning, allowing strategic and case-based courses of action to be drafted.

Preventive Co-operation

In the course of this development, preventive work became another fundamental component to inter-agency co-operation. A “Preventive Co-operation Clearing House” for the Security Discussion Group at the DIK was established in the Federal Office for Migration and Refugees to promote co-operation between security agencies and Muslim organisations. The goals and

duties of the clearing house are essentially to provide support in creating a national network of contacts at security agencies and Muslim organisations, security agency education and training projects, information offered by security agencies to Muslims, in creating informational materials and to be contacts for interested members of the public.

The IMK decided to establish a new GTAZ forum on the topic of “De-radicalisation” on 30 September 2009. The integrated approach to combat Islamic terrorism was thus expanded by another component of co-operation. While the order may apply to all authorities represented in the GTAZ, considering the task of this forum, state authorities naturally will have an important role. The goals are to exchange experience and information on “good practises” for security measures and approaches to combat radicalisation in the Islamist environment and to develop measures to actively work against the Islamist scene in Germany and/or have a de-radicalising effect on this scene.

Foreigners and Crime

According to the Federal Criminal Police Office’s statistics the crime rate among foreigners has been declining slightly for several years. In 2010 about 22 percent of the suspects were non-Germans, while in the early 1990s the rate was mostly about 30 percent (1993: 33.6 %). However, the level of crime of Germans and non-Germans cannot be compared, even if the share of foreign suspects relative to their share in the entire population is comparatively high. On the one hand there are clear differences in the age, sex, and social structures, on the other hand not all suspected foreigners are represented in the general population statistics. Finally, a significant share of offences concerns crimes which can be perpetrated only by foreigners, for instance violations of residence regulations. Two areas of crime show a particular high share of foreign suspects: organised crime and human trafficking. The German security and criminal prosecution authorities support, and cooperate closely, with

¹⁶² Beschleunigte Identifizierung und Rückführung von Gefährdern aus dem Bereich des islamistischen Terrorismus und Extremismus.

European institutions like EUROPOL¹⁶³ or FRONTEX¹⁶⁴ in these cross-border areas.

Foreigners are also often victims of crimes, particularly on the realm of human trafficking and organised drug and prostitution business. Since the implementation of the EU Victim Protection Directive¹⁶⁵ a residence permit – according to section 25(4a) Residence Act – can be issued to foreigners who are victims in human trafficking in order to testify in a penal procedure.

4.2.4 Health Care Policy

Health care institutions and their staff have more and more to deal with an increasing immigrant group, whose needs differ from the ones of the majority population. Characteristic cultural backgrounds and language barriers as well as socio-economic differences aggravate the access to health care. Therefore it is, among other things, important to strengthen the intercultural competence of the medical staff as well as to expand the offer of multilingual information leaflets (Salman et al. 2007: 17, 19; Robert Koch-Institut 2008: 7, 8, 123).

Health Issues of Migrants

On the one hand migrants may display health problems due to imported illnesses that, compared to Germany, have a higher prevalence rate in their native country, or due to inadequate health care in their homeland; others may have experienced traumatisa-

tion. On the other hand they are affected by illnesses that do not break out until their arrival in Germany, frequently due to socio-economic aspects, emotional

distress as consequence of integration problems or xenophobia. Notably, they are also on average less affected by a number of diseases – e.g. specific types of cancer – and are able to dispose of social resource that can have positive effects on their health (Krämer/Baune 2004: 14; Salman et al. 2007: 17; Robert Koch-Institut 2008: 7). The topic of the long-term care needs of migrants as well as supply and demand of corresponding long-term care services is becoming increasingly important (cf. Kohls 2012).

Entitlement to Medical Services and Access to Treatment

Foreigners with a residence or settlement permit are regularly insured under the compulsory social insurance system. According to the Asylum Seekers' Benefit Act, asylum seekers, refugees and foreigners on exceptional leave remain have a legal claim to medical treatment during acute sickness and while in pain as well as if they are pregnant or have recently given birth. Additional service can be granted on an individual basis, if a special need exists. Foreigners, who have received reduced social services pursuant to section 3 Asylum Seekers' Benefits Act and have not affected the length of their stay by abusing the law, will henceforth be entitled to regular medical services according to the German Social Code.

Irregular migrants are exposed to additional health risks due to their living and working conditions as well as their unsecured residence status. Although they have a legal claim to medical treatment in an emergency case, they often do not avail themselves of these claims as they fear to be discovered. Indeed, it is questionable in these cases, how the arising costs of medical treatment shall be met without passing on personal data, which usually occurs if the Social Welfare Offices jump in. As only public bodies the local health authorities offer anonymous counseling and testing in cases of epidemic illnesses for people without health insurance. In some cases, they even cover the costs of medical treatment in a clinic. However, this is only possible in cases in which pandemic diseases are to be prevented (Sinn et al. 2006: 98-101). The factual non-use of state services leads to persons illegally residing in the country being largely assisted by non-governmental organisations. These include the church-based organisations German Caritas Association¹⁶⁶, the Charitable Organisation of the Protestant

163 EUROPOL, the European Police Office, aims at intensifying the police cooperation of the Member States in combating terrorism, drug trafficking and other serious forms of international organised crime; www.europol.europa.eu.

164 FRONTEX, the European border security agency, coordinates the operational cooperation between the Member States in the field of border security; www.frontex.europa.eu.

165 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to Third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

166 Deutscher Caritasverband e.V.; www.caritas.de

Church in Germany¹⁶⁷, the Jesuit Refugee Service¹⁶⁸, the German Ecumenical Committee on Church Asylum¹⁶⁹, the German Parity Welfare Association¹⁷⁰, the various Refugee Councils and Asylum Workgroups, Pro Asyl (cf.2.4.1), the Association of the Order of Malta Volunteers¹⁷¹, and the Offices for Medical Assistance for Refugees in various cities¹⁷². The Medical Offices are available in several German cities. Irregular migrants are referred to medical practices and hospitals which supply or facilitate free and anonymous treatment. Additionally, in some cities there exist co-operation agreements between health departments and maternity hospitals. As part of this agreement, pregnant women can give birth to their children for a marginal portion of the normal cost. If the patients have sufficient financial means, these costs must be borne in full.

In recent years, however, there have been some pragmatic steps in regard to the facilitated use of emergency medical care by irregular migrants. The General Administrative Regulation of the Residence Act (AVwV-AufenthG) that took effect on 31 October 2009 thus specified that illegally residing foreigners could henceforth be treated at hospitals without fear of being discovered. Section 87(2) Residence Act regulates the obligation of public bodies to report to the Foreigners Authority in the event that the public body (e.g. a social welfare office) learns of the residence of a foreigner without residence title or leave to remain. However, section 88(2) Residence Act, in conjunction with section 203 German Penal Code limits the obligation to report to the extent that personal information made available to the public body e.g. by a physician or pharmacist cannot generally be reported to the Foreigners Authority due to regulations on protecting privacy. The AVwV-AufenthG also specifies under

No. 88.2.3 that “the administrative personnel of public hospitals responsible for billing” are also included as per section 203(1)1 German Penal Code (physicians, dentists, pharmacists or those in the healthcare profession). Thus if physicians pass on personal information from irregular migrants to the welfare agencies via billing, these agencies are now prohibited from forwarding the information (“extended privacy protection”).

Information Offers/Projects

One offer of the Federal Centre for Health Education¹⁷³ (BzgA) is a database named “Fostering Health of the Socially Disadvantaged”¹⁷⁴, which contains projects and offerings for the health promotion of migrants. Another one is the Information Service on Migration and Public Health¹⁷⁵ for professionals working in the field of migration and health. The Forum for Culturally Sensitive Work with the Elderly¹⁷⁶ is a merger of institutions, migrant organisations and other associations to exchange experience as well as provide a platform for lobbying.

4.2.5 Anti-Discrimination Policy

It is a rather recent development that there are separate statutory bases and political responsibilities concerning the anti-discrimination field, which had been relatively scattered before (Baer 2005). Since 18 August 2006 the General Act on Equal Treatment (AGG)¹⁷⁷ has been in force in Germany, which transposed four EU anti-discrimination directives into German law. It aims primarily at preventing or eliminating racial discriminations or discrimination due to ethnic origin, sex, religion or world view, disability, age, or sexual identity.

167 Diakonisches Werk der Evangelischen Kirche in Deutschland e.V.; www.diakonie.de

168 Jesuiten-Flüchtlingsdienst Deutschland; www.jesuiten-fluechtlingsdienst.de

169 Ökumenische Bundesarbeitsgemeinschaft (BAG) Asyl in der Kirche e.V.; www.kirchenasyl.de

170 Deutscher Paritätischer Wohlfahrtsverband e.V.; www.der-paritaetische.de/english/

171 Malteser Hilfsdienst e.V.; www.malteser.de

172 E.g. Medibüro in Berlin (www.medibuero.de) and Medinetz in Mainz (www.medinetzmainz.de).

173 Bundeszentrale für gesundheitliche Aufklärung; www.bzga.de

174 Gesundheitsförderung bei sozial Benachteiligten; www.gesundheitliche-chancengleichheit.de

175 Informationsdienst Migration und öffentliche Gesundheit; www.infodienst.bzga.de

176 Forum für kultursensible Altenhilfe; www.kultursensible-altenhilfe.de

177 General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006 (Federal Law Gazette I, 1897).

Of primary relevance for the areas of migration and asylum are the parts of the act which result from the EU Anti-Racism Directive.¹⁷⁸ However, the Anti-Racism Directive has not solely been implemented by the AGG, but also by means of numerous measures of the Federal Government and the Länder against right-wing extremism, racism, anti-Semitism as well as violence motivated by racism or right-wing extremism.

Institutions and Projects

Industrial or civil law violations of the General Act on Equal Treatment are punished by the general jurisdiction. In connection with the AGG the independent Federal Anti-Discrimination Agency (ADS)¹⁷⁹ supports – out-of-court – persons who were discriminated because of their ethnic origin, out of racist motivation and other reasons. The agency informs about the persons' claims, legal procedure opportunities, as well as information offers by third parties and tries to act as a mediator. The ADS' tasks lie in the field of public relations work, measures to prevent discrimination as well as the implementation of scientific studies. The agency submits an anti-discrimination report to the German Bundestag every four years. In order to support the dialogue with social groups the ADS has an advisory council to which representatives of different organisations involved in the field of anti-discrimination work are appointed.

Tangible ADS spheres of activity and projects in the area of ethnic equality include the intercultural opening of administration or equal treatment of persons with migration background regarding staffing. With the help of the EU programme on employment and social solidarity, PROGRESS, and in co-operation with some municipalities, ADS conducted the project “Chancen gleich(heit) prüfen – Diversity Mainstreaming für Verwaltungen”¹⁸⁰, from which emerged that administrations have a need to more closely address the topic of diversity and to discuss it with each other. Thus, as part of the project, assistance was created for administrative employees (cf. ADS 2012: 24).

Based on the “Anonymised Application Process” pilot project, ADS published the information and recommendations for employers; for, unlike many countries, Germany has thus far not done away with the application photo (which often reveals an ethnic origin). For the project, various companies and public administrations tested out a hiring process using completely anonymised applications for 12 months. It was clear that anonymising applications tended to allow equal opportunity to flourish, in particular that women and applicants with migration background have better chances of being invited to a job interview based on their application (cf. ADS 2012a: 47).

178 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

179 www.antidiskriminierungsstelle.de/bmfsfj/generator/ADS-en/root.html

180 Translation note: The title of the project is a play on word that simultaneously communicates an idea of “reviewing opportunity now” and “reviewing equal opportunity” that cannot be directly translated into English.

5 Closing Comments

The comprehensive reform of Germany's immigration law in 2005 brought about numerous changes to the organisation and management of immigration/asylum policy. Some regulations meant a change to certain routines and administrative procedures or modified institutional responsibilities. Legal and administrative practice was further developed in some areas. Additionally, multiple European Union directives on residence and asylum needed to be implemented into German law. This implementation transpired through corresponding implementation acts in the years 2007, 2009, 2011 and 2012.

The following paragraphs provide a brief analytical summary of selected questions on the further development of asylum and migration systems in Germany, having given consideration to the policy specified by Union directives and regulations.

Asylum Law and National Acceptance Procedures

German law contains multiple national regulations on granting asylum for international, humanitarian or political reasons. Since the enactment of the Immigration Act in 2005, as well as the Directive Implementation Act of 2007, the existing national provisions for accepting asylum applicants and others seeking protection have been complemented by or adapted to EU law. The national forms of protection set forth in the Asylum Act, however, do not compete with the system of protection based on European Law, but provide a necessary extension of it in terms of its breadth and effectiveness (cf. Parusel 2010). National regulations were used in previous years for humanitarian acceptance actions independent of the asylum system, among other implementations.¹⁸¹

¹⁸¹ Cf. in detail policy reports for 2009, 2010 and 2011 by the German National Contact Point for the EMN at www.emn-germany.de.

Controlling Labour Immigration and Securing Skilled Labour

The new Immigration Act introduced a significant innovation to the operational level of accepting foreigners to the German labour market: the so far two-step process involving the local Foreigners Authority (for residence titles as per the foreigners law) and the Federal Employment Agency (for work permits as per German Social Code) has been replaced by a "one-stop" system (cf. 4.1.6). The Foreigners Authorities have become the main contact regarding employment and residence permits that can now be issued through a single administrative act. If approval – and any review of the labour market situation – is required by the Federal Employment Agency for various occupations and occupational fields, the Foreigners Authorities will be notified by the agency of its decision.

Despite the turn toward labour market-oriented immigration control and simplified procedural steps, Germany was only able to permanently secure relatively few highly qualified immigrants in the initial years following the enactment of the Residence Act (cf. Parusel/Schneider 2011). The Federal Government attempted to counteract this through various primary and secondary legislation, such as with the "Federal Action Program: Labour Immigration's Contribution to Securing a Skilled Labour Base in Germany" of Summer 2008, the Labour Immigration Control Act of December 2008, the Overall Concept for Securing Skilled Labour of June 2011, as well as amendments to immigration law following implementation of the EU Blue Card Directive of June 2012.

With regards to temporary stays for educational or occupational purposes, Germany possesses reliable instruments and legal foundations in areas such as seasonal employment and service contractors and guest workers that also have been adapted by regulations in the past few years following new developments in economic needs or political developments on the European level (cf. Schneider/Parusel 2011).

To the Federal Republic's migration policy, these steps meant a clear increase in flexibility regarding the control of employment-based immigration, especially for highly qualified third-country nationals.

Integration

The Immigration Act marked a paradigm shift in integration policy and integration offers received a legal basis for the first time. Thus certain immigrant groups, i.e. labour immigrants, the self-employed, family members, those eligible for asylum, refugees as per the Geneva Convention on Refugees, and Jewish immigrants, have a right to participate in a nationally standardised integration course introduced in 2005; requirements for supplementary online courses were created in 2012. Since 2006, the DIK has provided a national forum for dialogue between state representatives and representatives of Muslims living in Germany. The integration offers have been under continuous expansion in recent years that most likely will continue.

Conclusion and Outlook

The study has shown that even after the great reform to immigration law in 2005, the organisation of asylum and immigration policy in Germany was subjected to constant changes that, if nothing else, could be linked to implementation requirements by the vested rights in refugee protection and other areas of migration achieved at the EU level. Yet regardless of these vested EU rights, national discourse has repeatedly resulted in adjustments to the law and to organisational practice, primarily with regards to the need for workers and the need to secure a future base for skilled workers. Such amendments to the now long-established right of residence are also expected in the coming years.

6 Annex

6.1 References

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- Zimmermann, Klaus F.** (2009): Labor Mobility and the Integration of European Labor Markets (DIW Discussion Papers 862). Berlin.
- Zinterer, Tanja** (2007): Interessenrepräsentation von Migranten: Von der Süßmuth-Kommission zum Integrationsgipfel, in: Thaa, Winfried (Hrsg.): Inklusion durch Repräsentation. Baden-Baden: 149-166.

6.2 Non-exhaustive Selection of Websites on the Subject

Federal Authorities, Ministries and Further Institutions

Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes)
www.antidiskriminierungsstelle.de

Federal Centre for Health Education (Bundeszentrale für gesundheitliche Aufklärung)
www.bzga.de

Federal Criminal Police Office (Bundeskriminalamt)
www.bka.de

Federal Customs Administration (Zollverwaltung)
www.zoll.de

Federal Employment Agency (Bundesagentur für Arbeit)
www.arbeitsagentur.de

Federal Government Commissioner for Matters Related to Repatriates and National Minorities in Germany
(Beauftragter der Bundesregierung für Aussiedlerfragen und nationale Minderheiten)
www.aussiedlerbeauftragter.de

Federal Government Commissioner for Migration, Refugees, and Integration (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration)
www.integrationsbeauftragte.de

Federal Intelligence Service (Bundesnachrichtendienst)
www.bnd.de

Federal Ministry of Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
www.bmz.bund.de

Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familien, Senioren, Frauen und Jugend)
www.bmfsfj.de

Federal Foreign Office (Auswärtiges Amt)
www.auswaertiges-amt.de

Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
www.bmas.de

Federal Ministry of the Interior (Bundesministerium des Innern)
www.bmi.bund.de

Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
www.bamf.de

Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz)
www.verfassungsschutz.de

Federal Office of Administration (Bundesverwaltungsamt)
www.bundesverwaltungsamt.de

Federal Police (Bundespolizei)
www.bundespolizei.de

Military Counterintelligence Service (Militärischer Abschirmdienst)
www.mad.bundeswehr.de

Central Referral Service for Skilled Employment Abroad ("Zentrale Auslands- und Fachvermittlung")
www.ba-auslandsvermittlung.de

Databases and Information Offers

Africa – North Rhine-Westphalia (Afrika – NRW)
www.afrika-nrw.net

Business Start-Up Portal (Federal Ministry of Economics and Technology, "Existenzgründungsportal")
www.existenzgruender.de

Centre for International Migration and Development (Centrum für internationale Migration und Entwicklung)
www.cimonline.de

Database "Acknowledgement and Assessment of Foreign Certificates of Education" (Secretary of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany, Datenbank "Anerkennung und Bewertung ausländischer Bildungsnachweise")
www.anabin.de

Database "Health Promotion of Socially Disadvantaged People" (Federal Centre for Health Education, Datenbank "Gesundheitsförderung bei sozial Benachteiligten")
www.gesundheitliche-chancengleichheit.de

Deutschland Portal (Federal Foreign Office, "Deutschland-Portal")
www.deutschland.de

Diversity Charter ("Charta der Vielfalt")
www.charta-der-vielfalt.de

Facts about Germany (Federal Foreign Office, "Tatsachen über Deutschland")
www.facts-about-germany.de

Federal Integration Portal (Federal Office for Migration and Refugees, Integrationsportal des Bundes)
www.integration-in-deutschland.de

Forum for Culturally Sensitive Old People's Welfare (Forum für kultursensible Altenhilfe)
www.kultursensible-altenhilfe.de

German Business Portal (Federal Ministry of Economics and Technology)
www.ixpos.de

Germany Alumni Portal
www.alumniportal-deutschland.de

Immigration Portal (Federal Ministry of the Interior, Zuwanderungsportal)
www.zuwanderung.de

Information Centre for Voluntary Return (ZIRF database) (Zentralstelle für Informationsvermittlung zur Rückkehrförderung (ZIRF-Datenbank))
<http://zirf.bamf.de>

Information Portal “Professional Acknowledgement” (Informationsportal „Berufliche Anerkennung“)
www.berufliche-anerkennung.de

Information Service Migration and Public Health (Federal Centre for Health Education, Informationsdienst “Migration und öffentliche Gesundheit”)
www.infodienst.bzga.de

“Recognition in Germany” – Information on Determining and Recognising Professional Qualifications Obtained Abroad
www.anerkennung-in-deutschland.de

Research Portal (Federal Ministry of Education and Research, Forschungsportal)
www.research-in-germany.de

Skilled Labour Portal (Federal Ministry for Economy and Technology, Federal Ministry of Labour and Social Affairs, Federal Employment Agency)
www.make-it-in-germany.com

Studies Portal (German Academic Exchange Service, Studienportal)
www.campus-germany.de

Young Germany – Career, Education and Lifestyle Guide (Federal Foreign Office)
www.young-germany.de

Youth Migration Service (Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, “Jugendmigrationsdienste”)
www.jugendmigrationsdienste.de

Research Institutions

Centre for International and European Law on Immigration and Asylum (University of Konstanz, Forschungszentrum für internationales und europäisches Ausländer-und Asylrecht)
<http://migration.uni-konstanz.de>

Centre on Migration, Citizenship and Development (Bielefeld University)
[www.uni-bielefeld.de/\(de\)/tdrc/ag_comcad](http://www.uni-bielefeld.de/(de)/tdrc/ag_comcad)

European Forum for Migration Studies (EFMS) (Otto-Friedrich-Universität Bamberg, Europäisches Forum für Migrationsstudien)
www.efms.uni-bamberg.de

Institute for Labour Market and Occupational Research (IAB)
www.iab.de

Institute for Migration Research and Intercultural Studies (University of Osnabrück, Institut für Migrationsforschung und Interkulturelle Studien)
www.imis.uni-osnabrueck.de

Research Group of the Federal Office for Migration and Refugees (Forschungsgruppe des Bundesamtes für Migration und Flüchtlinge)
www.bamf.de/forschung

Social Science Research Centre Berlin (Wissenschaftszentrum Berlin für Sozialforschung gGmbH)
www.wzb.eu

Non-Governmental Organisations

Central Council of Jews in Germany (Zentralrat der Juden in Deutschland)
www.zentralratjuden.de

Central Welfare Office of the Jews in Germany (Zentralwohlfahrtsstelle der Juden in Deutschland)
www.zwst.org

Charitable Organisation of the Protestant Church in Germany (Diakonisches Werk der Evangelischen Kirche in Deutschland e.V.)
www.diakonie.de

Development Service of the Protestant Church (Evangelischer Entwicklungsdienst e.V.)
www.eed.de

Federation of Expellees (Bund der Vertriebenen e.V.)
www.bund-der-vertriebenen.de

German Caritas Association (Deutscher Caritasverband e.V.)
www.caritas.de

German Ecumenical Committee on Church Asylum (Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.)
www.kirchenasyl.de

Council for Migration
www.rat-fuer-migration.de

Expert Council of German Foundations for Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration)
www.svr-migration.de

International Organisations

Europol
www.europol.europa.eu

Frontex
www.frontex.europa.eu

International Organisation for Migration
www.iom.int/germany/

UNHCR – United Nations High Commissioner for Refugees
www.unhcr.de

Union of Progressive Jews in Germany e.V.
www.liberales-juden.de

World University Service e.V.
www.wusgermany.de

Development Cooperation Enterprises

German Association for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH)
www.giz.de

German Financing and Development Association (Deutsche Investitions- und Entwicklungsgesellschaft)
www.deginvest.de

International Advanced Training and Development (Internationale Weiterbildung und Entwicklung gGmbH)
www.inwent.org

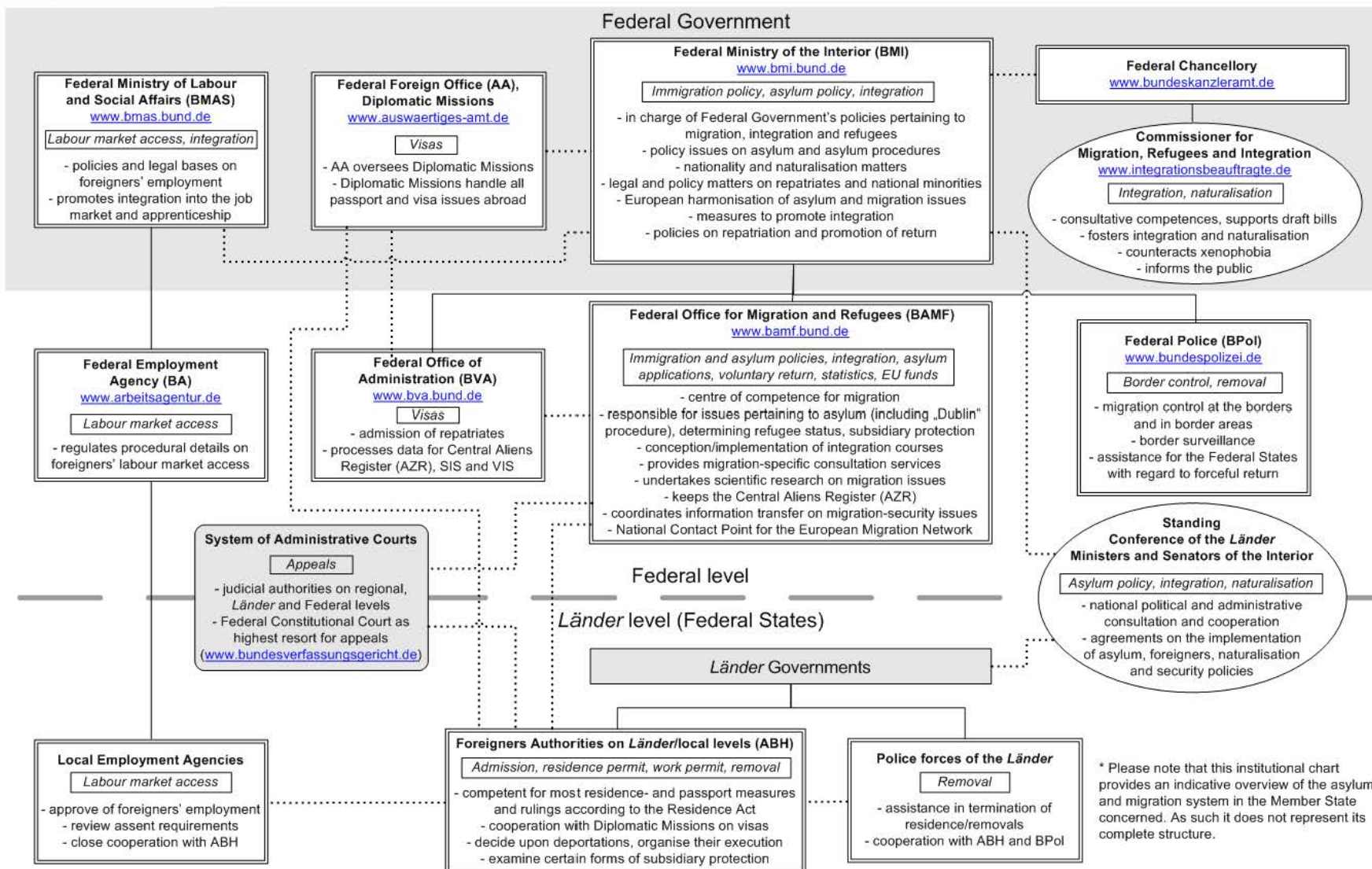
6.3 Institutional Framework for Immigration and Asylum Policies

The opposite institutional chart provides a simplified overview of institutional responsibilities of, and cooperation among the most important public actors in the organisation of asylum and migration policies in Germany. It serves the goal of visualising the fundamental conceptions inherent in this study; in order to maintain clarity, institutions and competences are depicted in a simplified way. Within the framework of the European Migration Network (EMN) and its larger study on “The Organisation of Asylum and Migration Policies in the Member States of the European Union”, the synopsis of the corresponding charts of participating Member States will allow for a comparative overview of political, administrative and operational structures of this policy area in the EU.

- In the scheme, various organisational levels are depicted. Institutions of major significance for immigration and asylum issues are the biggest boxes. Apart from the level of the responsible ministries (Supreme Federal Authorities, Federal Government) and the level of the respective administrative and operational authorities and agencies (Higher Federal Authorities), the level of the Federal States (Länder) is also incorporated, including the most important institutions on the municipal level and other regional administrative bodies, respectively.
- Full lines between single boxes indicate a hierarchical relationship: in each case, the overriding institution has the legal and/or functional supervision over the institution placed below. Dotted lines symbolise a cooperative relationship between the various institutions, which are particularly relevant for the asylum and migration policy area.
- Furthermore, the two most important intermediate/cooperative political institutions holding predominantly consultative functions for migration and asylum issues are considered. In order to delineate them from the central political and operational bodies of public administration, they are outlined by ellipses.
- The administrative jurisdiction in its competence for disputes relating to residence or asylum law is highlighted as well.
- In italics, each box features the key words corresponding to the political, organisational or operational responsibility of the respective body, in order to serve comparability with the charts of other EU Member States. Likewise, its central tasks for asylum/migration issues are enumerated non-conclusively.

Germany

Institutional Framework for immigration and asylum policies



Abbreviations

AFIS	Automatic Fingerprint Identification System (Automatisches Fingerabdruck-Identifizierungssystem)
AGEF	Consortium for Development and Skilled Workers (Arbeitsgruppe Entwicklung und Fachkräfte im Bereich der Migration und der Entwicklungszusammenarbeit gGmbH)
AGG	General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz)
ANABIN	Acknowledgement and Assessment of Foreign Certificates of Education (Anerkennung und Bewertung ausländischer Bildungsnachweise)
AQUA	Academics Qualifying for the Labour Market (Akademikerinnen und Akademiker qualifizieren sich für den Arbeitsmarkt)
AsylbLG	Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)
AslyVfG	Asylum Procedure Act (Asylverfahrensgesetz)
AsylVO	Asylum Ordinance (Asylverordnung)
AsylZBV	Ordinance Determining Asylum Competences (Asylzuständigkeitsbestimmungsverordnung)
AufenthG	Residence Act (Aufenthaltsgesetz)
AufenthV	Residence Ordinance (Aufenthaltsverordnung)
AuslG	Aliens Act (Ausländergesetz)
AZR	Central Aliens Register (Ausländerzentralregister)
AZRG	Act on the Central Aliens Register (Ausländerzentralregistergesetz)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAFI	Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge)
BAG	German Ecumenical Committee on Church Asylum (Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BeschV	Employment Ordinance (Beschäftigungsverordnung)
BeschVerfV	Employment Procedure Ordinance (Beschäftigungsverfahrensverordnung)
BfV	Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz)
BIRGiT	Accelerated Identification and Repatriation of Hazardous Persons from the Islamist Terrorist and Extremist Sector (Beschleunigte Identifizierung und Rückführung von Gefährdern aus dem Bereich des islamistischen Terrorismus und Extremismus)
BAKA	Federal Criminal Police Office (Bundeskriminalamt)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMFSFJ	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familien, Senioren, Frauen und Jugend)
BMI	Federal Ministry of the Interior (Bundesministerium des Innern)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
BND	Federal Intelligence Service (Bundesnachrichtendienst)
BPol	Federal Police (Bundespolizei)

BT-Drs.	Bundestag printed paper (Bundestagsdrucksache)
BVA	Federal Office of Administration (Bundesverwaltungsamt)
BzgA	Federal Centre for Health Education (Bundeszentrale für gesundheitliche Aufklärung)
CIM	Centre for International Migration and Development (Centrum für internationale Migration und Entwicklung)
COMCAD	Centre on Migration, Citizenship and Development
DAAD	German Academic Exchange Service (Deutscher Akademischer Austausch Dienst)
DEG	German Financing and Development Association (Deutsche Investitions- und Entwicklungsgesellschaft mbH)
DIK	German Islam Conference (Deutsche Islam Konferenz)
EASY	System for the Initial Distribution of Asylum Seekers (Erstverteilung von Asylbewerbern)
ECRE	European Council on Refugees and Exiles
EED	Development Service of the Protestant Church (Evangelischer Entwicklungsdienst e.V.)
efms	European forum for migration studies (europäisches forum für migrationsstudien)
EinbTestV	Naturalisation Test Ordinance (Einbürgerungstestverordnung)
EMN	European Migration Network (Europäisches Migrationsnetzwerk)
EUROPOL	European Police Office
GARP	Government Assisted Repatriation Programme
GASiM	Joint Analysis and Strategy Centre for Illegal Migration (Gemeinsames Analyse- und Strategiezentrum illegale Migration)
GG	Basic Law (Grundgesetz)
GKI	Common Consular Instructions (Gemeinsame Konsularische Instruktion)
GTAZ	Joint Counter-Terrorism Centre (Gemeinsames Terrorismusabwehrzentrum)
GIZ	German Association for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH)
IMIS	Institute for Migration Research and Intercultural Studies (Institut für Migrationsforschung und Interkulturelle Studien)
IMK	Standing Conference of the Federal States' Ministers and Senators of the Interior (Ständige Konferenz der Innenminister und -senatoren der Länder)
INTERPOL	International Criminal Police Organization
IntV	Ordinance on Integration Courses (Integrationskursverordnung)
IOM	International Organization for Migration (Internationale Organisation für Migration)
JMD	Youth Migration Service (Jugendmigrationsdienste)
KfbG	Act to Resolve Acts on Long-Term Consequences of War (Kriegsfolgenbereinigungsgesetz)
LKÄ	State Criminal Police Offices (Landeskriminalämter)
MAD	Military Counterintelligence Service (Militärischer Abschirmdienst)
MARiS	MigrationAsylumReIntegrationSystem (MigrationsAsylReIntegrationsSystem)
MBE	Advisory Services for Adult Immigrants (Migrationsberatung für erwachsene Zuwanderer)
REAG	Reintegration and Emigration Programme for Asylum-Seekers in Germany
RIIM	Return Initiative for Irregular Migrants Residing in the Main Cities of The European Union (Rückkehrinitiative für irreguläre MigrantInnen in Großstädten der Europäischen Union)
SchwarzArbG	Act to Combat Illicit Work and Illegal Employment (Schwarzarbeitsbekämpfungsgesetz)
SIS	Schengen Information System (Schengener Informationssystem)
SMAP	Special Migrants Assistance Programme
StAG	Nationality Act (Staatsangehörigkeitsgesetz)
TDRG	Transnationalisation and Development Research Centre

UNHCR	United Nations High Commissioner for Refugees
UPJ	Union for Progressive Judaism in Germany (Union Progressiver Juden in Deutschland e.V.)
ver.di	United Service Employees' Union (Vereinigte Dienstleistungsgewerkschaft)
VIS	Visa-Informationssystem
WZB	Social Science Research Centre Berlin (Wissenschaftszentrum Berlin für Sozialforschung gGmbH)
ZAB	Central Office for Foreign Education (Zentralstelle für ausländisches Bildungswesen)
ZAV	Central Office for Foreign and Specialised Referral (Zentrale Auslands-und Fachvermittlung)
ZKA	Customs Criminological Office (Zollkriminalamt)
ZIRF	Information Centre for Voluntary Return (Zentralstelle für Informationsvermittlung zur Rückkehrförderung)
ZuwG	Immigration Act (Zuwanderungsgesetz)
ZWST	Central Welfare Office of the Jews in Germany (Zentralwohlfahrtsstelle der Juden in Deutschland)

Publications of the Research Section of the Federal Office

Working Paper

		10/2007	Familiennachzug in Deutschland Verfasser: Axel Kreienbrink und Stefan Rühl
1/2005	Die Datenlage im Bereich der Migrations- und Integrationsforschung Verfasserin: Sonja Haug	11/2007	Türkische, griechische, italienische und polnische Personen sowie Personen aus den Nachfolgestaaten des ehemaligen Jugoslawien in Deutschland Verfasser: Christian Babka von Gostomski
2/2005	Illegalität von Migranten in Deutschland Verfasserin: Susanne Worbs unter Mitarbeit von Michael Wolf und Peter Schimany	12/2008	Kriminalität von Aussiedlern Eine Bestandsaufnahme Verfasser: Sonja Haug, Tatjana Baraulina, Christian Babka von Gostomski unter Mitarbeit von Stefan Rühl und Michael Wolf
3/2005	Jüdische Zuwanderer in Deutschland Verfasserin: Sonja Haug unter Mitarbeit von Peter Schimany	13/2008	Schulische Bildung von Migranten in Deutschland aus der Reihe „Integrationsreport“, Teil 1 Verfasser: Manuel Siegart
4/2005	Die alternde Gesellschaft Verfasser: Peter Schimany	14/2008	Sprachliche Integration von Migranten in Deutschland aus der Reihe „Integrationsreport“, Teil 2 Verfasserin: Sonja Haug
5/2006	Integrationskurse Erste Erfahrungen und Erkenntnisse einer Teilnehmerbefragung Verfasser: Sonja Haug und Frithjof Zerger	15/2008	Healthy-Migrant-Effect, Erfassungsfehler und andere Schwierigkeiten bei der Analyse der Mortalität von Migranten Eine Bestandsaufnahme Verfasser: Martin Kohls
6/2006	Arbeitsmarktbeteiligung von Ausländern im Gesundheitssektor in Deutschland Verfasser: Peter Derst, Barbara Heß und Hans Dietrich von Loeffelholz	16/2008	Leben Migranten wirklich länger? Eine empirische Analyse der Mortalität von Migranten in Deutschland Verfasser: Martin Kohls
7/2006	Einheitliche Schulkleidung in Deutschland Verfasser: Stefan Theuer	17/2008	Die Einbürgerung von Ausländern in Deutschland aus der Reihe „Integrationsreport“, Teil 3 Verfasserin: Susanne Worbs
8/2007	Soziodemographische Merkmale, Berufsstruktur und Verwandtschaftsnetzwerke jüdischer Zuwanderer Verfasserin: Sonja Haug unter Mitarbeit von Michael Wolf		
9/2007	Migration von hoch Qualifizierten und hochrangig Beschäftigten aus Drittstaaten nach Deutschland Verfasserinnen: Barbara Heß und Lenore Sauer		

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| <p>18/2008 Die Datenlage im Bereich der internationalen Migration in Europa und seinen Nachbarregionen
Verfasser: Kevin Borchers unter Mitarbeit von Wiebke Breustedt</p> <p>19/2008 Das Integrationspanel
Ergebnisse zur Integration von Teilnehmern zu Beginn ihres Integrationskurses
Verfasserin: Nina Rother</p> <p>20/2008 Aspekte der Arbeitsmarktintegration von Frauen ausländischer Nationalität in Deutschland
Eine vergleichende Analyse über türkische, italienische, griechische und polnische Frauen sowie Frauen aus den Nachfolgestaaten des ehemaligen Jugoslawiens
Verfasserin: Anja Sticks</p> <p>21/2008 Wohnen und innerstädtische Segregation von Zuwanderern in Deutschland aus der Reihe „Integrationsreport“, Teil 4
Verfasserin: Lena Friedrich</p> <p>22/2009 Berufliche und akademische Ausbildung von Migranten in Deutschland aus der Reihe „Integrationsreport“, Teil 5
Verfasser: Manuel Siegert</p> <p>23/2009 Das Integrationspanel
Entwicklung von alltagsrelevanten Sprachfertigkeiten und Sprachkompetenzen der Integrationskursteilnehmer während des Kurses
Verfasserin: Nina Rother</p> <p>24/2009 Förderung der Bildungserfolge von Migranten: Effekte familienorientierter Projekte
Abschlussbericht zum Projekt Bildungserfolge bei Kindern und Jugendlichen mit Migrationshintergrund durch Zusammenarbeit mit den Eltern
Verfasser: Lena Friedrich und Manuel Siegert unter Mitarbeit von Karin Schuller</p> | <p>25/2009 Die Organisation der Asyl- und Zuwanderungspolitik in Deutschland
Studie I/2008 im Rahmen des Europäischen Migrationsnetzwerks (EMN)
Verfasser: Jan Schneider</p> <p>26/2009 Unbegleitete minderjährige Migranten in Deutschland
Aufnahme, Rückkehr und Integration
Studie II/2008 im Rahmen des Europäischen Migrationsnetzwerks (EMN)
Verfasser: Bernd Parusel</p> <p>27/2009 Grunddaten der Zuwandererbevolkerung in Deutschland
aus der Reihe „Integrationsreport“, Teil 6
Verfasser: Stefan Rühl</p> <p>28/2009 Zuwanderung von Hochqualifizierten aus Drittstaaten nach Deutschland
Ergebnisse einer schriftlichen Befragung
Verfasserin: Barbara Heß</p> <p>29/2010 Das Integrationspanel
Ergebnisse einer Befragung von Teilnehmenden zu Beginn ihres Alphabetisierungskurses
Verfasserin: Nina Rother</p> <p>30/2010 Europäische und nationale Formen der Schutzgewährung in Deutschland
Studie II/2009 im Rahmen des Europäischen Migrationsnetzwerks (EMN)
Verfasser: Bernd Parusel</p> <p>31/2010 Rückkehrunterstützung in Deutschland
Programme und Strategien zur Förderung von unterstützter Rückkehr und zur Reintegration in Drittstaaten
Studie I/2009 im Rahmen des Europäischen Migrationsnetzwerks (EMN)
Verfasser: Jan Schneider und Axel Kreienbrink</p> <p>32/2010 Deckung des Arbeitskräftebedarfs durch Zuwanderung
Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)
Verfasser: Bernd Parusel und Jan Schneider</p> |
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| <p>33/2010 Interethnische Kontakte, Freundschaften, Partnerschaften und Ehen von Migranten in Deutschland aus der Reihe „Integrationsreport“, Teil 7
Verfasserin: Sonja Haug</p> <p>34/2010 Mediennutzung von Migranten in Deutschland aus der Reihe „Integrationsreport“, Teil 8
Verfasserin: Susanne Worbs</p> <p>35/2011 Zirkuläre und temporäre Migration Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)
Verfasser: Jan Schneider und Bernd Parusel</p> <p>36/2011 Migranten am Arbeitsmarkt in Deutschland aus der Reihe „Integrationsreport“, Teil 9
Verfasser: Katharina Seebaß und Manuel Siebert</p> <p>37/2011 Der Einfluss des Integrationskurses auf die Integration russisch- und türkischstämmiger Integrationskursteilnehmerinnen
Verfasserin: Karin Schuller</p> <p>38/2011 Sozialversicherungspflichtig beschäftigte Ausländerinnen und Ausländer in qualifizierten Dienstleistungen
Verfasserin: Barbara Heß</p> <p>39/2011 Migranten im Niedriglohnsektor unter besonderer Berücksichtigung der Geduldeten und Bleibeberechtigten
Verfasser: Waldemar Lukas</p> <p>40/2011 Visumpolitik als Migrationskanal Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)
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48/2012 Zuwanderung von selbständigen und freiberuflichen Migranten aus Drittstaaten nach Deutschland
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Forschungsberichte

1/2005 Der Einfluss von Zuwanderung auf die deutsche Gesellschaft
Verfasser: Manfred Kohlmeier und Peter Schimany

2/2005 Illegal aufhältige Drittstaatsangehörige in Deutschland
Verfasser: Annette Sinn, Axel Kreienbrink und Hans-Dietrich von Loeffelholz unter Mitarbeit von Michael Wolf

3/2007 Abschlussbericht
Zuwanderung und Integration von (Spät-)Aussiedlern — Ermittlung und Bewertung der Auswirkungen des Wohnortzuweisungsgesetzes
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Verfasser: Peter Schimany

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